

2008

Kathryn C. Brough v. Richard James Brough : Addendum to the Brief of Appellant

Utah Court of Appeals

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Clark B. Allred; Allred & McClellan, P.C.; Attorney for the Appellee;
Randall T. Gaither; Attorney for Appellant; Law Office of Randall Gaither.

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH

KATHRYN C. BROUGH,

Petitioner and Appellee,

vs.

RICHARD JAMES BROUGH,

Respondent and Appellant.

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ADDENDUM

TO THE

BRIEF OF THE APPELLANT

Case No: 20080816-CA

An appeal in a civil matter from the Eighth Judicial District Court, Roosevelt County

The Honorable Judge John R. Anderson, presiding
District Court Case 054000084

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FILED
UTAH APPELLATE COURTS

APR 17 2009

IN THE UTAH COURT OF APPEALS
STATE OF UTAH

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CONSTITUTIONAL OR STATUTORY PROVISIONS

Article VIII, Section 1 of the *Utah Constitution* states, "The judicial power of the state shall be vested in a Supreme Court, in a trial court of general jurisdiction . . . , and in such other courts as the Legislature by statute may establish."

Utah Code Annotated § 30-8-3(1953) states that "A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration."

Utah Code Annotated § 30-8-6(1953) states as follows:

Utah Code Annotated § 30-8-6. Enforcement.

(1) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

- (a) that party did not execute the agreement voluntarily; or
- (b) the agreement was fraudulent when it was executed and, before execution of the agreement, that party:
 - (i) was not provided a reasonable disclosure of the property or financial obligations of the other party insofar as was possible;
 - (ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and
 - (iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(2) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

(3) An issue of fraud of a premarital agreement shall be decided by the court as a matter of law.

Rule 59 of the Utah Rules of Civil Procedure states as follows:

Rule 59 of the Utah Rules of Civil Procedure. New trials; amendments of judgment.

(a) Grounds. Subject to the provisions of Rule 61, a new trial may be granted to all or any of the parties and on all or part of the issues, for any of the following causes; provided, however, that on a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment:

(a)(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion by which either party was prevented from having a fair trial. . .

(a)(5) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice.

(a)(6) Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

(a)(7) Error in law.

Rule 7 of The Utah Rules of Civil Procedure states as follows:

(f) Orders.

1. (f)(1) An order includes every direction of the court, including a minute order entered in writing, not included in a judgment. An order for the payment of money may be enforced in the same manner as if it were a judgment. Except as otherwise provided by these rules, any order made without notice to the adverse party may be vacated or modified by the judge who made it with or without notice. Orders shall state whether they are entered upon trial, stipulation, motion or the court's initiative.

(f)(2) Unless the court approves the proposed order submitted with an initial memorandum, or unless otherwise directed by the court, the prevailing party shall, within fifteen days after the court's decision, serve upon the other parties a proposed order in conformity with the court's decision. Objections to the proposed order shall be filed within five days after service. The party preparing the order shall file the proposed order upon being served with an objection or upon expiration of the time to object.

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FILED
DISTRICT COURT
DUCHESE COUNTY, UTAH

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IN THE EIGHTH JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY

STATE OF UTAH, ROOSEVELT DEPARTMENT

KATHRYN C. BROUGH,)	
	)	DECREE OF DIVORCE
)	
Petitioner,)	
)	
vs.)	
)	
RICHARD JAMES BROUGH,	)	Civil No. 0540000084
)	
Respondent.	)	Judge John R. Anderson

The above case came before the Court for trial on July 9, 2008. The Court has entered an order divorcing the parties and took the remaining issues under advisement. The Court has now entered its Findings of Fact and Conclusions of Law and based thereon,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Respondent, if he wants to retain ownership of the home and Brough Trucking and Crane Service Inc. (Brough Trucking), is ordered to pay to the Petitioner the sum of \$386,500.00 within 90 days of the entry of this decree. He is to notify Petitioner's

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counsel within 15 days of entry of the decree if he elects to retain both assets.

2. If the Respondent does not elect to retain ownership of the home and Brough Trucking as provided above, then the Petitioner is awarded the Neola home and property, the Respondent is awarded Brough Trucking and the Respondent is ordered to pay Petitioner \$61,500.00 for the difference in the value within 90 days of entry of the decree.

3. Respondent is ordered to refinance the \$160,000 debt to remove the home and Petitioner from liability on that loan.

4. The Petitioner is awarded the vehicle she drives (subject to the remaining debt on it as of the date this decree is signed), the personal property in her possession and the property listed on Exhibit 24.

5. Respondent is awarded the remaining personal property, the horse trailer and the vehicle he drives.

6. Neither party is awarded alimony.

7. Respondent is ordered to pay to Petitioner the amount she has incurred in legal fees and costs in this matter. The \$15,391.53 set forth on the affidavit submitted as Exhibit 4, 10 hours at \$175.00 per hour for preparation and 9 hours at \$175.00

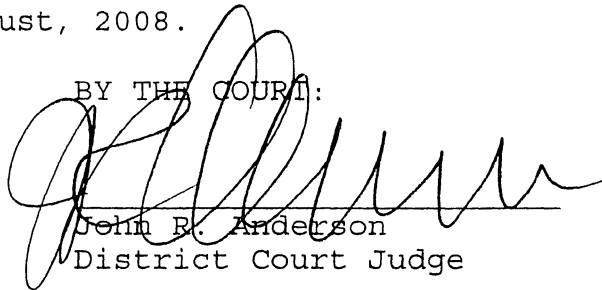
per hour for trial are awarded and ordered to be paid. In addition, the Petitioner's counsel shall submit a supplemental affidavit for the time spent on post-trial matters. If Respondent objects to the reasonableness of that amount, he shall file a motion with the Court setting forth those objections and the Court will set for hearing those objections.

8. Respondent is ordered to pay the costs of the appraisal performed by Brad Townsend.

9. Each party is ordered to execute and deliver, without delay, any titles or other documents which are presented to either one by the other and which are necessary to effectuate the transfer of property as has been hereinbefore set forth.

DATED this 28 day of August, 2008.

BY THE COURT:



John R. Anderson
District Court Judge

MAILING CERTIFICATE

I, Cheree Brotherson, am employed by the office of ALLRED & McCLELLAN, P. C. attorneys for Petitioner herein and hereby certify that I served the attached DECREE OF DIVORCE on Respondent by placing a true and correct copy thereon in an envelope addressed to:

RANDALL GAITHER
ATTORNEY AT LAW
159 WEST 300 SOUTH BROADWAY #105
SALT LAKE CITY, UT 84101

and deposited the same, sealed, with first class postage prepaid thereon, in the United States mail at Roosevelt, Utah, on the 7th day of August, 2008.



CHEREÉ BROTHERSON

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SEP - 4 2008

JUDICIAL DISTRICT
BY [Signature] DEPUTY

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IN THE EIGHTH JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY
ROOSEVELT DEPARTMENT, STATE OF UTAH

KATHRYN C. BROUGH,)	
	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
Petitioner,)	
)	
vs.)	
)	
RICHARD JAMES BROUGH,	)	Civil No. 054000084
)	
Respondent.	)	Judge John R. Anderson

The above case came before the Court for trial on the 9th day of July, 2008. Petitioner was present with her attorney, Clark B Allred. Respondent was present with his attorney, Randall Gaither. Evidence was received by the Court in the form of testimony and exhibits. Argument was received by counsel and the Court took the matter under advisement.

The Court having reviewed the evidence and after being fully advised, makes these findings of fact and conclusions of law.

FINDINGS OF FACT

1. Petitioner was a resident of Duchesne County, State of Utah, and had been for more than three months immediately prior to the commencement of this action.

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2. The Petitioner worked for the Respondent from 1993 to 1995. She then worked for her husband, Mr. Baum, until they separated. In the summer of 1997, she again started working for the Respondent at NJ Trucking.

3. On December 1, 1997, the parties started living together and they married on July 14, 1998.

4. At the time the parties married, the Respondent had two minor children from a previous marriage. One of the reasons the parties married was to assist the Respondent in obtaining custody of those two minor children.

5. The Respondent also had two older children who were of majority age. Those children insisted that the Petitioner sign an agreement not to claim any assets the Respondent then owned if the parties divorced in the future. The Respondent stated that he thought the request was dumb. The Petitioner, to appease the two children, called an attorney, but, when informed of the cost of preparing a prenuptial agreement, elected to write out a one paragraph statement which she and the Respondent signed which is Respondent's exhibit 1. There was no discussion or disclosure of what each party owned. The testimony of the Petitioner, which was not rebutted, was that the statement was only to apply to assets owned on the date of marriage and not to further acquired assets or improvements to those assets.

6. At the time of the marriage, the Respondent owned a business called the Glass Shop that no longer exists, family property in Randlett (to which the Petitioner has made no claim), a home in Duchesne that had a large mortgage against it, and a business called NJ Trucking. He was also purchasing acreage in Bandana Ranches.

7. At the time of the marriage, NJ Trucking had some vehicles, trailers, and equipment. NJ Trucking had been valued at \$44,000 a few years earlier in the Respondent's prior divorce. The cost to acquire the equipment that remains from NJ Trucking, based on Exhibit 27, was \$93,124.00. Its present depreciated value is \$3,151.00. The 1999 financial records and tax return shows that NJ Trucking had gross income of \$188,785.00.

8. After the parties' marriage, the parties changed and expanded the NJ Trucking business. They bought a crane for \$135,000 and other heavy equipment and changed the name to Brough Trucking and Crane Service Inc. Respondent remained the sole shareholder. In 2004, the year before the parties separated, the gross income had increased to \$785,250.00. Both parties worked in the business. They seldom took salaries and paid most of the family and personal expenses from Brough Trucking. The parties personally and jointly took out a \$160,000.00 loan that was used to pay off the debt on the crane and other equipment. The marital home was used as collateral for the loan. The net value of

Brough Trucking at the time of the trial is \$492,000.00. See Exhibit 3 Townsend appraisal.

9. When the parties started living together and at the beginning of the marriage, they lived in a home in Duchesne that was owned by the Respondent. That home was subject to a substantial mortgage on which \$1,300.00 per month payments were made during the marriage. Those payments were made from earnings from Brough Trucking.

10. The Petitioner, with her own labor and the assistance of her son, remodeled the Duchesne house, including making a room out of the patio, adding walls and windows, taking out a sliding glass door to open up an area, painting, installing sheet rock, carpet and siding, and replacing the old shower with a new bathtub. She also remodeled the downstairs and added a wall, sheet rock, painted and added carpet downstairs, put in light fixtures, and did yard work.

11. Shortly after the parties married in September of 1998, the Respondent's son, Bryan, age 14, came to live with the parties. He wanted to go to school in Roosevelt. Just prior to the parties starting to live together, the Respondent had purchased a shop in Roosevelt from Drillers Inc. to use for Brough Trucking. That shop was dirty and needed repairs. The parties decided to construct living quarters in the Roosevelt shop so that they could move to Roosevelt.

12. The Petitioner, primarily by herself, but with assistance of her children and the Respondent's children, built a bedroom, bathroom

and living area upstairs in the Roosevelt shop including sheet rock, tile work and carpet. Downstairs, she put in 2 bedrooms, a kitchen, cleaned the shop and added floor tiles to the shop. Carpets were added to all living areas and an office was constructed downstairs.

13. In August of 1999, the Respondent's youngest daughter, Amanda, age 12, came to live with the parties. The parties and the children moved from Duchesne and started living in the Roosevelt shop.

14. The parties then started looking for a more suitable home or property on which to construct a home. The Petitioner looked at many properties but did not find anything acceptable to both parties. In the summer of 2000, the parties were talking to a Clare Duncan who said he had some acreage for sale. The parties went and looked at the property, approximately 18 acres near Neola, Utah, and made an offer of \$50,000.00. That offer was accepted and the transaction closed on August 3, 2000. The parties paid \$20,000 down and jointly signed a note for the balance of \$30,000.00. The property was deeded jointly to the parties. The \$20,000.00 down payment was paid from Brough Trucking just as all other bills were paid from Brough Trucking.

15. The parties then took plans and hired a general contractor. Construction on the home started in early 2001. The Petitioner was responsible for coordinating the work. She went to the construction site on a daily basis. In addition to coordinating with the contractors, she picked up materials and also worked on the home. The

home is a log home, and the Petitioner was the person that chinked (put putty) between the logs.

16. The Respondent then fired the general contractor so the Petitioner took over the completion of the home. Additionally, in the summer of 2001, the Respondent broke his leg and was unable to help on the home or to work at Brough Trucking. The Petitioner did the insulating of the home, completed the sheet rock, built a fruit room, constructed a gun room for the Respondent, and painted, wallpapered and carpeted the home. The parties and the Respondent's two children moved into the home at Thanksgiving of 2001. The following summer (2002), the Petitioner did the landscaping, including putting in the yard, trees and an orchard, sprinkling system, fire pit and painting the fences. Later, she constructed a deck and swimming pool.

17. The monies for constructing the home were paid primarily from Brough Trucking and some payments were made from the Respondent's personal checking account and some from the Petitioner's personal checking account.

18. The present value of the home is \$325,000.00 which is less than the parties paid to construct the home. It is jointly owned by the parties.

19. During the marriage, the Respondent worked at Brough Trucking (except for the year summer of 2001 to the summer of 2002 when his leg was broken). The Petitioner was involved in the remodeling and building

of the living quarters, the maintaining of the home and family and also worked at Brough Trucking. The parties seldom took salaries from the business. W2 records show the Petitioner was only paid \$3,360 in 1999, \$10,640.00 in 2000, \$8,880 in 2001, \$7,680.00 in 2002 and \$6,876.00 in 2003. Both parties maintained separate checking accounts. The Petitioner deposited her checks in her account and then used those monies on the home, the family, and expenses for both her children and the Respondent's children. Respondent deposited his monies in his account and used those to pay child support and legal fees in the early part of the marriage and for personal and family expenses during the marriage. Since the parties took minimal salaries, almost all living expenses, food, utilities, transportation, housing (including the remodeling of the shop and Duchesne house, mortgage payments and building of the home) were paid with checks or credit cards from Brough Trucking.

20. The Respondent claimed that he should have credit against the value of the home for premarital assets that were sold. However, the evidence did not support that claim. He was unable to trace those assets and monies. The evidence showed that monies from the sale of assets were used for purposes other than the home including paying operating expenses of Brough Trucking when the Respondent had a broken leg.

21. Respondent claimed that the money from the sale of the Bandana Ranch was used for the down payment of the 18 acres in Neola where the

home was built. First, that property was paid for during the marriage. Secondly, the 18 acres in Neola closed on August 3, 2000. The Bandana Ranch was not sold until August 24, 2000 and the account the \$18,512 went into was used to pay many different living and personal expenses.

22. Respondent claimed the money from the sale of the Duchesne shop should be a credit. He sold that shop on May 3, 1999. The down payment of \$28,983 was two years before the home was constructed and the monies went into the general account at NJ Trucking and was spent for expenses of NJ Trucking. The balance of the purchase price was apparently received in 2000 (a year before the home was constructed) and also went into the Brough Trucking general account and was used for Brough Trucking expenses.

23. Respondent also claims a credit of \$30,000 for a rig he sold in June 2000 and other equipment he sold in 2000. Again, those sales occurred well before the construction of the home, those monies went into the general account at Brough Trucking and they were spent before the land was bought or the home was constructed.

24. Respondent also makes a claim for the \$24,702.00 received from the sale of the Duchesne home in April 2002. That home had been substantially improved and remodeled by the Petitioner and marital monies were used to pay mortgage and taxes on the property. There was no showing where that money was deposited and no showing it was used on the Neola Home.

25. On October 9, 2002, the parties borrowed and jointly signed a promissory note for \$160,000.00. The home was used as collateral. The money was used to pay off the loan on the crane and other equipment. Respondent testified that, because of his broken leg and his inability to work for a year, the money was needed to keep Brough Trucking operating. The money apparently was used to pay off the debt on the crane and some other vehicles to reduce the monthly obligations of Brough Trucking.

26. After completing the home, the parties decided to further expand Brough Trucking. In March 2004, they purchased 80 acres in Ballard to be used for a gravel pit and fill dirt. The 80 acres was titled in Brough Trucking. Petitioner remodeled an old trailer house which was moved to the property to be used as a scale house and office. That remodeling included framing, insulation, sheet rock, and wiring. The purchase price for the 80 acres was paid by Brough Trucking.

27. In May 2004, the parties jointly acquired 4 acres with utilities adjacent to the 80 acres. The 4 acres were titled in the names of the parties as joint tenants. The purchase price was paid by Brough Trucking. The parties then deeded that property to Brough Trucking.

28. The Petitioner was the primary person involved in raising the Respondent's two children. She helped and encouraged them in school,

did the cooking, cleaning and laundry. She also paid some of their expenses from her bank account.

29. Shortly after Amanda turned 18, she and the Petitioner had an argument. The Respondent then told the Petitioner to vacate the home. The Petitioner vacated the home on August 1, 2005, taking very few personal items with her. She came back the next day and loaded some items into a horse trailer. The Respondent, however, took back the horse trailer with most of the items.

30. The personal property is all used property and has minimal value. The values listed by the Respondent are either new values or exaggerated.

31. After the parties separated, the Petitioner obtained employment as a laborer with Stanco Insulation. She presently resides with her mother. She has purchased a used trailer she is setting up next to her mother. Her present net monthly income is \$1,656.00 and her expenses are \$1,695.00 per month.

32. The Respondent has continued to reside in the home and operate Brough Trucking and continues to pay his personal expenses thru Brough Trucking.

33. Petitioner has incurred legal fees and costs in this matter. The affidavit of the Petitioner's attorney shows that she had incurred \$15,391.53 in fees thru July 2, 2008. He testified that he had incurred an additional 10 hours in preparation prior to trial at \$175.00 per

hour. In addition, there was the time of trial and the post-trial work. The affidavit sets forth in detail the work that was provided and the hourly rates charged. In addition, the Petitioner paid \$400.00 for the appraisal of the home.

34. The Petitioner has made some payments on her legal fees but, based on her income and expenses, she has not been able to pay those fees and she does not have the means to pay the additional fees incurred in preparation for the trial and the trial.

35. Respondent did not request reimbursement of legal fees in his pleadings. At trial, he requested that he be reimbursed for the costs incurred in providing information to the appraiser of Brough Trucking. There is also approximately \$7,000.00 still owing for that appraisal. The appraisal of Brough Trucking was based on an order of the Court. Respondent was ordered to pay that expense with the Court reserving the right to reallocate that expense. The appraisal was needed and helpful to the Court in valuing the assets and deciding the division of the assets.

CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the Court concludes:

1. The one paragraph prenuptial agreement was not negotiated by the parties. There was no disclosure of assets in the prenuptial agreement and it was prepared mainly to appease the older children. It was intended to be limited to what the Respondent owned at the time of

the marriage as listed on that document. Items listed included the Glass Shop, the family properties in Randlett, and the assets in NJ Trucking at the time of the marriage. At the time of the marriage, the Respondent had also purchased the Roosevelt shop, and had the Duchesne shop and the Duchesne home. Those properties were not listed on the agreement, were not disclosed and became marital properties because of the marital funds used to pay for and enhance those assets and the enhancements and improvements made by the Petitioner.¹ The facts that the Petitioner improved the other assets, signed jointly on a \$160,000.00 loan and worked in the business also support the position that the agreement was limited to assets and debts existing at the time of the marriage.

2. The Glass Shop no longer exists and there was no evidence that any of its value remains. The Petitioner made no claim to the Randlett properties. There was little evidence as to the value of NJ Trucking at the time of the marriage. The best evidence was the \$44,000.00 value at the Respondent's prior divorce.

3. The monies from the sale of the Duchesne shop were deposited in the general bank account of Brough Trucking and used for general expenses of Brough Trucking. Those monies were received prior to the construction of the home and were not used in the home. Since there is

¹ Reese v. Reese, 1999 UT 75, ¶¶24-25; and Pierce v. Pierce, 2000 UT 7 ¶¶20, 27.

no showing or tracing of those monies to the home, there should be no credit given against the value of the marital assets.

4. The parties changed the nature of NJ Trucking and changed its name to Brough Trucking. Petitioner was actively involved in Brough Trucking and in the parties' successful efforts to increase its business and its value. She was also actively involved in enhancing the assets of Brough Trucking. She remodeled the Roosevelt shop and increased its value. She also built the scale house for the 80 acres. She cosigned on the \$160,000.00 note to pay for the crane and other vehicles. The monies to buy the crane, vehicles and land for Brough Trucking all came from earnings during the marriage. The parties did not treat Brough Trucking as a separate entity but paid all marital bills and living expenses from Brough Trucking. The business and personal expenses were commingled to make it impossible to determine what was personal and what was business. Even though Brough Trucking's stock was in the Respondent's name, it is a marital asset less the \$44,000.00 value at the time of the marriage.

5. The Roosevelt shop, though titled in the Respondent's name is used in and is part of Brough Trucking. The valuation of Brough Trucking by Mr. Townsend included the value of the shop. As noted above, the Petitioner greatly enhanced the value of that shop by cleaning it and building living quarters on the shop. The shop should be included in Brough Trucking and is a marital asset.

6. The Duchesne house was subject to a mortgage when the parties married which mortgage was paid from earnings during the marriage. The home was also remodeled and improved by the Petitioner during the marriage. The monies from the sale of the house were deposited in a general account which was spent for general living and business expenses. There was no tracing or showing that the monies from the sale of the Duchesne house went into the Neola house. In addition, those monies became marital assets because of the use of earnings during the marriage to pay the mortgage and taxes and the remodeling by the Petitioner.

7. The Bandana Ranch property was being purchased during the marriage with earnings from the marriage. The money from the sale of that property did not go to the down payment on the Neola property, as claimed by the Respondent, but was spent on general expenses. There should be no credit against marital assets given for those monies.

8. The Respondent also claimed credit for a rig and other property he asserted that he sold and used the proceeds to pay on the Neola house. The Respondent originally denied having any documents to support his claim of premarital assets. Shortly before trial, he provided some documents and tried to introduce additional documents at trial which the Court refused to receive because they had not been timely disclosed. There was evidence of \$30,000.00 from a rig. There was no evidence showing that those monies went into the home, but rather those

funds went into the Brough Trucking account and were spent on Brough Trucking expenses.²

9. The Neola home was purchased jointly by the parties and remains titled in both parties' names. The Petitioner was the primary person involved in the construction of that home, including doing much of the construction herself. The monies for the construction of the home came from earnings in Brough Trucking, from Petitioner's account where she deposited her salary and from the Respondent's account where he deposited his salary. It is a marital asset.

10. The Petitioner was actively involved in the expansion of Brough Trucking, she remodeled two living quarters and built the Neola home, she raised the Respondent's two children thru their teenage years and she was the person doing the cleaning and meals. The Respondent's position, that all property was premarital and that Petitioner should get no interest in it, would leave the Petitioner, at age 55, with nothing. The small wage she was paid results in less social security when she reaches retirement age than if she had been working for full wages. Fairness and equity require that she receive one half of the value of the Neola home and Brough Trucking (less \$44,000.00).³ Brough

²Dunn v Dunn 802 P.2d 1314 (Ut.App. 1990) pre marital assets that have been consumed, commingled etc loss their separate status.

³
Hogue v. Hogue, 831 P.2d 120, 121 (Utah Ct. App. 1992); Burke v. Burke, 733 P.2d 133, 135 (Utah 1987). See also Haumont v. Haumont, 793

Trucking has a value of \$492,000.00 less \$44,000.00 and the house has a value of \$325,000.00. Therefore, the Respondent, if he wants to retain ownership of the home and Brough Trucking, should be ordered to pay to the Petitioner the sum of \$386,500.00. In the alternative, the Petitioner should be awarded the Neola home and property with a value of \$325,000.00 and the Respondent awarded Brough Trucking and the Respondent ordered to pay Petitioner the difference of \$61,500.00 and to refinance the \$160,000.00 debt to remove the home and Petitioner from liability on that loan.

11. The Petitioner should also be awarded the vehicle she drives, subject to the remaining debt on it as of the date the decree is signed and the personal property in her possession and the property listed on Exhibit 24. Respondent should be awarded the remaining personal property, the horse trailer and the vehicle he drives.

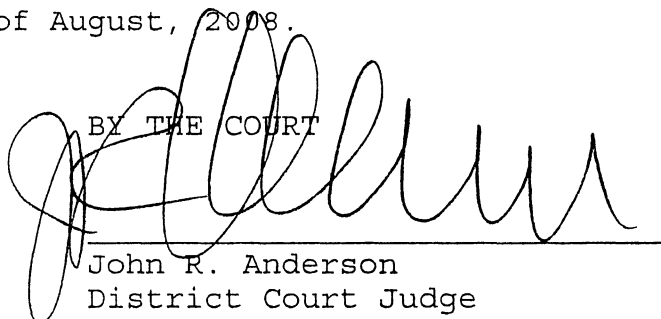
12. Petitioner waived her claim to alimony as her income presently meets her expenses. However, her income is not sufficient to pay her legal fees and costs. The financial declaration received by the Court seems to be accurate and the expenses listed thereon are reasonable.

P.2d 421 (Utah Ct. App. 1990); Barber v. Barber, 792 P.2d 134, 136 (Utah Ct. App. 1990); Oliekan v. Oliekan, 2006 UT App 405, ¶20; Dunn v. Dunn, 802 P.2d 1314, 1321 (Ut. Ct. App. 1990) (using marital funds to make installment payments on separate property changes it to marital property); and Mortensen v. Mortensen, 760 P.2d 304 (Utah 1988) (listing many factors the court considers).

The Respondent has had the benefit of Brough Trucking to pay his expenses and legal fees and he has resided in the home. The Respondent should be ordered to reimburse the Petitioner for the legal fees she has incurred. The amount of legal fees as set forth on the Affidavit submitted by Petitioner's attorney were necessary and the fees charged are reasonable.⁴ In addition, the Petitioner incurred 10 more hours in preparation and the time incurred for trial and post-trial work. An additional affidavit should be submitted as to the additional time incurred.

13. The cost for the appraisal of Brough Trucking was needed for the valuation of the business. The Respondent should be required to pay the balance owing on that bill. There is no basis to award the Respondent for expenses incurred by his secretary to provide information to the appraiser. The Respondent, having the full control of Brough Trucking, has the much greater ability to pay the expenses including appraisal costs and legal fees in this case.

DATED this 28 day of August, 2008.

BY THE COURT

John R. Anderson
District Court Judge

⁴Rudman v. Rudman, 812 P.2d 73, 77 (Utah Ct. App. 1991).

MAILING CERTIFICATE

I, Cheree Brotherson, am employed by the office of ALLRED & McCLELLAN, P. C. attorneys for Petitioner herein and hereby certify that I served the attached FINDINGS OF FACT AND CONCLUSIONS OF LAW on Respondent by placing a true and correct copy thereon in an envelope addressed to:

RANDALL GAITHER
ATTORNEY AT LAW
159 WEST 300 SOUTH BROADWAY #105
SALT LAKE CITY, UT 84101

and deposited the same, sealed, with first class postage prepaid thereon, in the United States mail at Roosevelt, Utah, on the 7th day of August, 2008.

A handwritten signature in black ink, appearing to read 'Cheree Brotherson', is written over a horizontal line.

CHEREE BROTHERSON

000350

000022

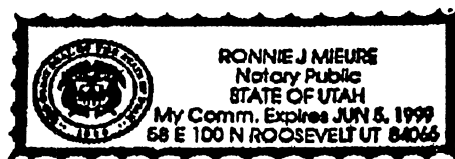
I KATHRYN CURFEW BAUM AM IN NO WAY ASSOCIATED WITH AND HOLD NO CLAIM TO ANY PERSONAL PROPERTIES, ASSETS OR MONEY OF RICHARD JAMES BROUGH, N.J. TRUCKING INC., THE GLASS STORE, ANY PERSONAL OR FAMILY PROPERTIES. ALSO I WILL NOT BE LIABLE FOR ANY DEBTS THAT OCCURE FROM ANY OF THE ABOVE PROPERTIES.

RICHARD JAMES BROUGH WILL NOT BE LIABLE FOR ANY DEBTS THAT KATHRYN CURFEW BAUM HAS ACQUIRED.

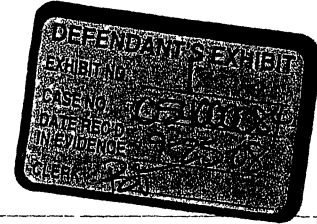
Kathryn Curfew Baum
KATHRYN CURFEW BAUM

Richard James Brough
RICHARD JAMES BROUGH

Signed before me this 9th day of July 1998.



Ronnie J Mieux
NOTARY



IN THE EIGHTH JUDICIAL DISTRICT COURT
DUCIESNE COUNTY, STATE OF UTAH
ROOSEVELT DEPARTMENT

Kathryn C Brough,	:	
	:	
Petitioner,	:	Findings of Fact, Conclusions of Law And Decree
	:	
vs	:	
	:	
Richard James Brough,	:	Case No 054000084
	:	
Respondent	:	Judge John R Anderson

Having come on regularly for trial on July 9, 2008, Randall Garther appearing for the Respondent, and Clark Allied appearing for the Petitioner Evidence having been adduced, argument having been made, and the Court having taken the matter under advisement now makes and issues the following order, findings of fact, conclusions of law and decree

The Court heard testimony about the ten year marriage and the contributions put into the marriage by both parties There was a prenuptial agreement prepared by the Petitioner at the insistence of the Respondent's adult children

This was a fifth marriage for Mrs Brough and a fourth marriage for Mr Brough

The Petitioner did not ask for alimony There are no children born as issue of the marriage During the course of the marriage, the parties acquired additional business assets and a home The Court is of the opinion that Mrs Brough would be entitled to the value of the business as it accrued and grew from the date of the marriage The Court is also of the opinion that the Petitioner is entitled to one-half of the net equity in the home that was built in Neola The parties have stipulated to the real estate appraisal which indicated a value of approximately \$312,000

The expert appraiser, Brad Townsend, presented documentation and was cross-examined via telephone conference and he determined that the present existing value of the business was \$492,000 An examination of the appraisal documents and interpolation of the value of the business before or at the date of the prenuptial agreement was approximately \$_____

From the foregoing introductory observations, the Court now makes and enters its

FINDINGS OF FACT

1. The parties were married in July of 1998.
2. The prenuptial agreement was prepared by the Petitioner and was entered into primarily to satisfy the Respondent's adult children.
3. During the course of the marriage, the Petitioner contributed to the marital estate by working and first of all improving the Duchesne home, and secondly assuming the role of Mom to the Respondent's children. She disciplined them, went to the school functions and was successful in getting both children to and graduating from high school¹
4. As the marital estate grew from the expansion of the business, the Petitioner worked hard in keeping books, acting as secretary and doing household duties, all of the cooking, all of the cleaning, all of the child problems, and single handedly took on constructing an apartment in the place of business housing the oilfield moving company now known as Brough Trucking and Crane.
5. After deciding the department in the shop owned by Brough Trucking was uncomfortable and unreasonable, the parties acquired an interest in land in Neola from Mr. Duncan. The land purchase was in August, 2000. During the construction of the Neola home, the general contractor was fired at about its first stage of completion. The evidence adduced that the Petitioner sole handedly finished the home, chinked all of the logs, refinished the second floor, insulated the second floor and the roof, hung sheetrock, finished the sheetrock, painted, and by her efforts, painted the home in total. The evidence adduced also indicated that she built a deck, decking around the home, and installed a swimming pool. From the evidence, it is apparent that the earnings from Brough Trucking were used to pay family expenses, mortgage payments on the home, and for other necessities. The funds from Brough Trucking were co-mingled. The parties were fairly conservative in their spending.
6. During the course of the marriage and post prenuptial agreement, the company acquired a crane for \$130,000, two Kenworth trucks in the year 2000, bought another red Kenworth truck, a Chevrolet Yukon, a Chevrolet pickup, and a one-ton truck. The record also indicated they purchased two vehicles for Amanda, which was the Respondent's young daughter. Evidence also showed that the company purchased a \$50,000 trailer, a Caterpillar tractor, and bought a big loader. The step??? trailer was used in oilfield moving. It's valued on the sheets prepared by the appraiser at the present depreciated rate.
7. The Court finds from inspection of financial statements and interpreting the appraisal that the business then known as N.L. Trucking was worth \$200,000 at the date of the marriage. At the date of the separation, the Respondent ordered the Petitioner out of the family home. She packed up a few items in a horse trailer and left without an argument.
8. (Itemize here the personal property in dispute....which I don't know since I wasn't there)

¹ The Court would observe that the only thing harder than raising teenagers is raising someone else's.

9. The evidence adduced that the Respondent had an accident and broke his foot in July 2001 and was out of heavy duty work for approximately one year. In order to keep funding the company and to make some purchases, to wit the crane, the Respondent borrowed \$160,000 against the real estate to cover that.

From the foregoing findings of fact, the Court makes and utters it

CONCLUSIONS OF LAW

1. The prenuptial agreement, while valid as such, only protected the property of the Respondent up to the date of marriage. Anything acquired or any increases from that date become marital property
2. The log house in Neola is marital property.
3. Because there is such a disparity in income of the parties, the Petitioner will be awarded her attorney's fees and costs.

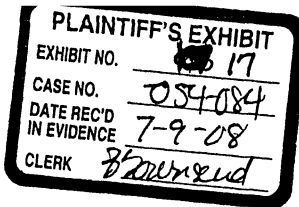
DATED this _____ day of July, 2008

BY THE COURT:

Judge John R. Anderson
Eighth District Court Judge

000026

Sunrise Title Company
550 East 200 North 118-3
Roosevelt, Utah 84066



ENTRY 2003002793
Book 921 Page 671 \$10.00
15-APR-05 12:00
RANDY SIMMONS
RECORDER, UTAH COUNTY, UTAH
SUNRISE TITLE COMPANY
550 E 200 N (118-3) ROOSEVELT, UT 84066
Rec By: CONNIE SIMPER, DEPUTY

Re: Misc.

Mail Tax Notice To: Entry 2003002793
Book 921 Page 671
Brough Trucking & Crane Service, Inc.
P.O. Box 367
Roosevelt, UT 84066

S/N 14:019:0029
SWSL

WARRANTY DEED

RICHARD J. BROUGH AND KATHY BROUGH, grantors of Roosevelt, County of Duchesne, State of Utah, hereby CONVEY and WARRANT to

BROUGH TRUCKING AND CRANE SERVICE, INC.

grantees of Roosevelt, County of Duchesne, State of Utah, for the sum of TEN AND NO/100 DOLLARS, and other good and valuable considerations, the following described tract of land in Uintah County, State of Utah:

Commencing at the Southeast Corner of SECTION 18, TOWNSHIP 2 SOUTH, RANGE 1 EAST, UTAH SPECIAL MERIDIAN; thence North 89°11'19" West a distance of 1895.64 feet along the South line of said Section and North 1°19'27" East a distance of 451.22 feet to the TRUE POINT OF BEGINNING; thence North 89°11'19" West 259.65 feet; thence North 0°06'23" East 470.00 feet; thence East 620.00 feet, more or less; thence Southerly 140.00 feet, more or less; thence North 89°11'19" West 350.00 feet; thence South 1°19'27" West 333.00 feet to beginning.

(Parcel 1)

Easement for Right-of-way: Commencing at the Southeast Corner of SECTION 18, TOWNSHIP 2 SOUTH, RANGE 1 EAST, UTAH SPECIAL MERIDIAN; thence North 89°11'19" West 1545.64 feet along the South line of said Section and North 1°19'27" East 924.22 feet to the TRUE POINT OF BEGINNING; thence East 40 feet; thence South 924.22 feet; thence West 40 feet; thence North 924.22 feet to beginning, as created in Corrected Easement for Right-of-way recorded May 4, 2004 as Entry No. 2004003326 in Book 881, at Page 142, records of Uintah County, Utah.

(Parcel 2)

INCLUDING all improvements and appurtenances thereto belonging.

SUBJECT TO rights-of-way and easements of record and/or enforceable in law and equity.

EXCEPTING AND RESERVING all gas, oil and other minerals.

WITNESS, the hand of said grantors, this 3rd day of August, A. D. 2004.

RICHARD J. BROUGH

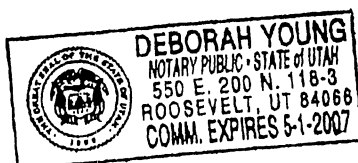
KATHY BROUGH

STATE OF UTAH

County of Duchesne

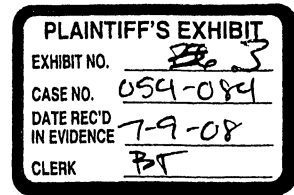
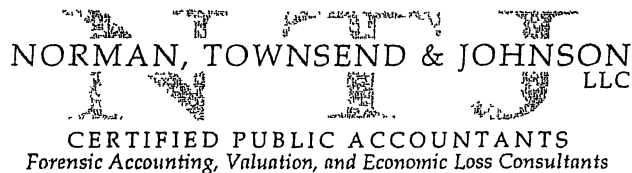
)ss.

On this 3rd day of August, 2004, before me, the undersigned Notary Public in and for said County and State, personally appeared RICHARD J. BROUGH AND KATHY BROUGH [☒ personally known to me] [() proved to me on the basis of satisfactory evidence] to be the persons whose names have subscribed to this instrument and acknowledged to me that they executed it.



Witness my hand and official seal

Notary Public in and for said County and State



July 8, 2008

Clark Allred
Allred & McClellan, P.C.
148 South Vernal Ave., Suite 101
Vernal, Utah 84078

Re: Fair market value of 100 percent of the common stock of Brough Trucking and Crane Service, Inc. on a control, nonmarketable basis as of December 31, 2007

Dear Mr. Allred:

Norman, Townsend & Johnson, LLC (NTJ) has been retained to estimate the fair market value of 100 percent of the common stock of Brough Trucking and Crane Service, Inc. (Brough Trucking or the Company) on a control, nonmarketable basis as of December 31, 2007. We have also been asked to value NJ Trucking, Inc. as of the time of marriage of Richard Brough and Kathy Brough. We were unable to determine a value for NJ Trucking, Inc. at the time of marriage due to the lack of sufficient documentation and the inability to retroactively inspect the business' assets to compensate for the lack of documentation. Attached is our summary valuation report for Brough Trucking.

We have performed a valuation engagement and present our summary report in conformity with the "Statement of Standards for Valuation Services No. 1" (SSVS) of the American Institute of Certified Public Accountants. Our study was undertaken using widely accepted principles of financial analysis and valuation. The standard of value is fair market value.

The International Glossary of Business Valuation Terms defines fair market value as:

"The price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arms length in an open an unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts."

In preparing this valuation we have relied upon historical financial information which Brough Trucking provided. We did not make independent examinations of any financial statements or other information provided by management which was relied upon and, accordingly, we make no representations or warranties nor do we express any opinion regarding the accuracy or reasonableness of such.

Clark Allred
Allred & Mclellan, P.C.
July 8, 2008
Page 2

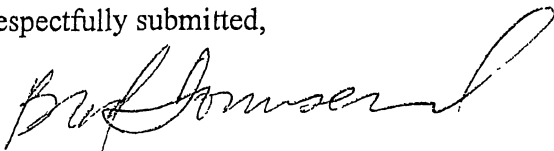
Since valuation is an imprecise science, NTJ does not purport to be a guarantor of value. Value is a question of informed judgement, and reasonable persons can differ in their estimates of value. NTJ does certify that this valuation study was conducted using conceptually sound and commonly accepted valuation methods.

In the opinion of the undersigned appraiser, using the valuation methods described in the attached summary report, and subject to the assumptions and limiting conditions incorporated herein, the fair market value of 100 percent of the common stock of Brough Trucking on a control, nonmarketable basis as of December 31, 2007, is:

\$492,000

Four Hundred Ninety-Two Thousand Dollars

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brad Townsend", with a stylized flourish at the end.

Brad Townsend, MBA, CPA/ABV, DABFA
Norman, Townsend & Johnson, LLC

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INTRODUCTION

IDENTITY OF CLIENT

Norman Townsend & Johnson, LLC (NTJ) has been retained by Kathy Brough in the divorce proceedings of Kathy Brough v. Richard Brough to provide valuation services. This valuation report shall not be provided to any party other than the Court, the parties to this action, and their respective legal counsel without the written consent of NTJ.

PURPOSE AND INTENDED USE OF THE VALUATION

We understand that the results of our analysis will be used for establishing the fair market value of 100 percent of the common stock of Brough Trucking as of December 31, 2007 (the valuation date). The purpose of this valuation is to determine the value of Brough Trucking for use in the divorce proceedings of Kathy Brough v. Richard Brough.

IDENTITY OF THE SUBJECT ENTITY AND SUBJECT INTEREST

We have been asked to provide an estimate of the fair market value of 100 percent of the common stock in Brough Trucking on a control, nonmarketable basis as of December 31, 2007.

EFFECTIVE DATE OF THE APPRAISAL AND THE DATE OF THE REPORT

In this summary report we have determined the fair market value of 100 percent of the common stock of Brough Trucking on a control, nonmarketable basis as of December 31, 2007. The date of the report is July 8, 2008.

PREMISE OF VALUE

The premise of value is going concern. The *International Glossary of Business Valuation Terms* defines "Going Concern" as "an ongoing operating business enterprise," and "Going Concern Value" as "the value of a 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."

STANDARD OF VALUE

The standard of value used in this report is fair market value. Fair market value is defined in the *International Glossary of Business Valuation Terms* as "the price, expressed in terms of cash

equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arms length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts.”

DUE DILIGENCE SUMMARY

In connection with our analysis, we have made such reviews, analyses and inquiries as we have deemed necessary and appropriate under the circumstances.

- We analyzed the Company’s historical income statements for the periods ending December 31, 2001 through 2007.
- We analyzed the Company’s historical balance sheets as of December 31, 2001 through 2007.
- We analyzed certain other publicly available financial data relevant to the analysis including: Federal Reserve statistical releases; Morning Star SBBI Valuation Edition 2007 Yearbook; Duff & Phelps, Risk Premium Report; financial data and SEC reports for the selected guideline companies; and other miscellaneous information.
- We conducted such other studies, analyses and inquiries, as we have deemed appropriate.

We have not independently verified the accuracy and completeness of the information supplied to us with respect to the Company and do not assume any responsibility with respect to it. We have made physical inspection of the assets of the Company.

RESTRICTIONS OR LIMITATIONS IN THE SCOPE OF WORK OR DATA AVAILABLE

None

ADDITIONAL THIRD PARTY SPECIALISTS RELIED UPON IN THIS VALUATION ENGAGEMENT

The parties to this divorce agreed to engage Ron Liese to appraise the business equipment. We have relied upon his appraisal to determine value of the equipment owned by Brough Trucking.

VALUATION APPROACHES AND METHODS USED

As part of the valuation of Brough Trucking we have analyzed the value of the company using the income approach and the asset approach. Within the income approach we have used the capitalized net income and capitalized cash flow methods.

We have applied a weighting of 100 percent to the value determined using the asset approach. The asset approach acts as a floor, or minimum, value for a business entity.

DISCLOSURE OF SUBSEQUENT EVENTS

None

CONCLUSIONS REACHED IN THE VALUATION ASSIGNMENT

We have performed a valuation engagement, as that term is defined in the Statement of Standards for Valuation Services No. 1 (SSVS) of the American Institute of Certified Public Accountants, of 100 percent of the common stock of Brough Trucking on a control, nonmarketable basis as of December 31, 2007. Subject to the Statement of Assumptions and Limiting Conditions, based upon our analysis as described in this summary valuation report, and the facts and circumstances as of the valuation date, the fair market value of 100 percent of the common stock of Brough Trucking as of December 31, 2007, on a control, nonmarketable basis is (See Schedule A):

\$492,000

Four Hundred Ninety-Two Thousand Dollars

|

ASSUMPTIONS AND LIMITING CONDITIONS

This valuation is subject to the following assumptions and limiting conditions:

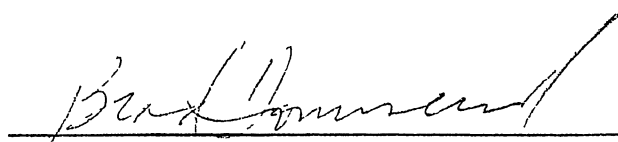
1. Information, estimates, and opinions contained in this report are obtained from sources considered to be reliable. However, we assume no responsibility for such sources.
2. The company and its representatives warranted to us that the information they supplied was complete and accurate to the best of their knowledge and that the financial statement information reflects the company's results of operations and financial condition. Norman Townsend & Johnson, LLC has not independently verified such information, and we express no opinion regarding such information.
3. Possession of this report, or a copy thereof, does not carry with it the right to publish all or part of it, nor may the report be used for any other purpose without the previous written consent of the appraiser, and, in any event, only with proper authorization. This valuation report shall not be provided to any third party without the written consent of Norman Townsend & Johnson, LLC.
4. No investigation of titles to property or of any ownership claims to the property by any individuals or company has been undertaken. Unless otherwise stated in our report, title is assumed to be free and clear of encumbrances and as provided to the appraiser.
5. The terms of our engagement are such that we have no obligation to update this report or to revise the valuation because of events and transactions occurring subsequent to the date of the report.
6. We are not required to give testimony in court, or be in attendance during any hearings or depositions, with reference to the company being valued, unless previous arrangements have been made.
7. Unless otherwise provided for in writing and agreed to by both parties in advance, the extent of the liability for the completeness or accuracy of the data, opinions, comments, recommendations and conclusions shall not exceed the amount paid to the appraisers for professional fees, and then only to the party(s) for whom this report was originally prepared.
8. The valuation of a business enterprise is a matter of informed judgment. The accompanying valuation has been prepared on the basis of information and assumptions set forth in this report and the attached exhibits. An actual transaction in the shares may be concluded at a higher value or lower value, depending on the circumstances surrounding the company, the appraised business interest, and the motivations and knowledge of both the buyers and sellers at that time. Norman Townsend & Johnson, LLC does not guarantee the values individual buyers and sellers may reach in an actual transaction.

9. The conclusions of value in this report are effective as of December 31, 2007, only and are to be used in the legal proceedings of Brough v. Brough.
10. Valuation reports may contain prospective financial information, estimates, or opinions that represent the view of the appraiser about reasonable expectations at a particular point in time, but such information, estimates, or opinions are not offered as predictions or as assurances that a particular level of income or profit will be achieved or that specific events will occur.
11. We assume that there are no hidden or unexpected conditions of the business or liabilities that would adversely affect value, other than as indicated in this report.

CERTIFICATION

We certify that, to the best of our knowledge and belief:

1. The statements of fact in this report are, to the best of our knowledge, true and correct.
2. The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
3. Neither the consultant nor any officer, agent, or employee of Norman Townsend & Johnson, LLC has any present or prospective interest in the property that is the subject of this report, and we have no personal interest with respect to the parties involved.
4. We have no bias with respect to the property that is the subject of this report or to the parties involved with this engagement.
5. Our engagement in this assignment was not contingent upon developing or reporting predetermined results.
6. Compensation paid to Norman Townsend & Johnson, LLC 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, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
7. Our analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with the *Statement on Standards for Valuation Services* as established by the American Institute for Certified Public Accountants for conducting and reporting on business valuations.
8. This report was prepared under the direction of R. Brad Townsend, MBA, CPA/ABV, DABFA. No one provided significant professional assistance other than professional staff of Norman Townsend & Johnson, LLC.



R. Brad Townsend, MBA, CPA/ABV, DABFA
NORMAN TOWNSEND & JOHNSON, LLC
July 8, 2008

Schedule A
Brough Trucking and Crane Service, Inc.
Summary of Value

	<u>Schedule</u>	<u>Value</u>	<u>Weight</u>	<u>Weighted Value</u>
<u>Income Approach to Value</u>				
Capitalized Net Income	B	\$ 118,432	0.0%	\$ -
Capitalized Cash Flow	C	123,644	0.0%	-
<u>Asset Approach to Value</u>				
Adjusted Book value	E	492,453	100.0%	492,453
			100.0%	
Control, Marketable Value				\$ 492,453
Rounded				\$ 492,000

Schedule B
Brough Trucking and Crane Service, Inc.
Capitalization of Adjusted Net Income

<u>Year</u>	<u>Schedule</u>	<u>Adjusted Net Income</u>	<u>Weight Factor</u>	<u>Weighted Net Income</u>
2001	D	\$ 4,400	0	\$
2002	D	6,798	0	
2003	D	(3,401)	0	
2004	D	31,481	1	31,481
2005	D	12,918	1	12,918
2006	D	8,290	1	8,290
2007	D	47,972	1	47,972
Total			4	\$ 100,660
Weighted Average Net Income				25,165
Divide by: Capitalization Rate				19.12%
Control/Marketable Operating Value of Company				131,591
Indicated Value of Company on a Control, Marketable Basis				\$ 131,591
Marketability discount at 10.0%				(13,159)
Estimated Value on a Control, Nonmarketable Basis				\$ 118,432

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Schedule C
Brough Trucking and Crane Service, Inc.
Capitalization of Projected Cash Flow

Projected Net income	\$ 25,165
Depreciation	25,150
Capital Expenditures	(25,795)
Debt Repayments	
Working Capital Needs	<u>1,089</u>
Cash Flow	<u>\$ 25,609</u>
 Calculation of Value	
Cash Flow	\$ 25,609
Divide by: Capitalization Rate	<u>18.64%</u>
Indicated Operating Value of Company on Control, Marketable Basis	137,382
Indicated Value of Company on a Control, Marketable Basis	<u>\$ 137,382</u>
Less Discount for Lack of Marketability at	10% <u>(13,738)</u>
Estimated Operating Value on a Control, Nonmarketable Basis	<u>\$ 123,644</u>

Schedule D
Brough Trucking and Crane Service, Inc.
Adjusted Income Statements
For Years Ending December 31, 2001-2007 from Tax Returns

	2001	Adjusted 2001	2002	Adjusted 2002	2003	Adjusted 2003	2004	Adjusted 2004	2005	Adjusted 2005	2006	Adjusted 2006	2007	Adjusted 2007
Income (Sales)	\$643,092	\$643,092	\$438,813	\$438,813	\$508,006	\$508,006	\$785,250	\$785,250	\$843,366	\$843,366	\$431,795	\$431,795	\$403,977	\$403,977
Deductions														
Accounting & Legal	1,800	1,800	2,740	2,740	1,800	1,800	2,157	2,157	2,888	2,888	6,151	6,151	-	-
Advertising	2,069	2,069	1,436	1,436	1,946	1,946	1,985	1,985	1,086	1,086	1,288	1,288	2,561	2,561
Bank Charges	48	48	125	125	-	-	25	25	25	25	-	-	-	-
Compensation of Officers	24,480	(1,946) A	22,534	19,380 (2,795) A	16,585	- 18,651 A	18,651	11,888 14,561 A	26,449	6,066 21,941 A	28,007	2,631 13,741 A	16,372 2,016 13,504 A	15,520
Contributions	-	-	-	-	-	-	-	-	-	-	1,100	1,100	-	-
Delivery and Freight	26	26	-	-	155	155	-	-	206	206	10	10	-	-
Depreciation	51,833	51,833	51,221	51,221	41,254	41,254	50,397	50,397	32,150	32,150	20,153	20,153	11,097	11,097
Dues and Subscriptions	972	972	1,319	1,319	1,009	1,009	1,409	1,409	593	593	729	729	-	-
Fuel & Oil	32,270	32,270	12,162	12,162	9,769	9,769	32,251	32,251	46,388	46,388	66,670	66,670	-	-
Gifts	-	-	-	-	-	-	-	-	1,285	1,285	-	-	-	-
Insurance	34,526	34,526	59,912	59,912	48,295	48,295	56,263	56,263	56,158	56,158	41,325	41,325	-	-
Interest	19,228	19,228	27,133	27,133	12,836	12,836	4,603	4,603	9,045	9,045	50	50	632	632
Meals & Entertainment	-	-	28	28	30	30	185	185	52	52	252	252	-	-
Miscellaneous	137	(11,979) B	(11,442)	(10,938) B	-	(17,883) B	(17,883) B	(17,959)	-	(19,978) B	(19,978)	(9,852) B	(9,852)	(11,260) B
Office Expense	1,261	1,261	937	937	1,377	1,377	2,170	2,170	-	-	-	-	-	-
Outside Services	176,336	176,336	114,824	114,824	161,159	161,159	247,751	247,751	284,227	284,227	7,356	7,356	153,220	153,220
Postage	-	-	-	-	-	-	-	-	-	-	2,895	2,895	-	-
Promotions	807	807	550	550	675	675	525	525	2,014	2,014	-	-	-	-
Rents	1,191	1,191	693	693	5,259	5,259	14,413	14,413	17,076	17,076	15,644	15,644	17,128	17,128
Repairs and Maintenance	38,357	38,357	20,549	20,549	38,026	38,026	36,710	36,710	28,629	28,629	24,450	24,450	40,178	40,178
Salaries and Wages	85,460	85,460	32,049	32,049	55,304	55,304	95,451	95,451	117,868	117,868	111,718	111,718	90,897	90,897
Supplies	130,748	130,748	60,981	60,981	90,339	90,339	97,561	97,561	132,807	132,807	70,693	70,693	-	-
Taxes and Licenses	23,452	23,452	20,019	20,019	17,469	17,469	20,962	20,962	30,693	30,693	23,846	23,846	24,554	24,554
Telephone	4,297	4,297	4,081	4,081	4,196	4,196	4,622	4,622	5,290	5,290	4,734	4,734	-	-
Tires	7,533	7,533	2,234	2,234	11,231	11,231	16,621	16,621	23,067	23,067	5,414	5,414	-	-
Travel	-	-	-	-	-	-	19	19	-	-	-	-	-	-
Utilities	16,298	16,298	11,702	11,702	9,127	9,127	8,846	8,846	10,361	10,361	10,930	10,930	-	-
Total Deductions	653,129	(13,525)	639,604	444,075 (13,733)	430,342	511,256 769	512,025	706,814 (3,399)	703,415	807,974 1,963	809,037	418,037 3,890	421,926	342,283 2,245
Ordinary Income	(10,037)	13,525	3,488	(5,262) 13,733	8,471	(3,250) (769)	(4,019)	78,436 3,399	81,835	35,392 (1,963)	33,429	13,758 (3,890)	9,869	61,694 (2,245)
K-1 Adjustments														
Section 179 Depreciation	-	-	-	-	-	-	(44,173)	(44,173)	(18,000)	(18,000)	-	-	(2,500)	(2,500)
Long-Term Capital Gain	1,750	1,750	-	-	-	-	-	-	-	-	-	-	160	160
Total K-1 Adjustments	1,750	-	1,750	-	-	-	(44,173)	(44,173)	(18,000)	(18,000)	-	-	(2,340)	(2,340)
M-1 Adjustments														
Depreciation	-	-	(28)	(28)	-	-	-	-	-	-	-	-	-	-
Travel and Entertainment	-	-	-	-	(30)	(30)	(185)	(185)	(51)	(51)	-	-	-	-
Penalties	-	-	(350)	(350)	-	-	-	-	-	-	-	-	-	-
Total M-1 Adjustments	-	-	(378)	(378)	(30)	(30)	(185)	(185)	(51)	(51)	-	-	-	-
Book Net Income	(8,287)	13,525	5,238	(5,640) 13,733	8,093	(3,280) (769)	(4,049)	34,078 3,399	37,477	17,341 (1,963)	15,378	13,758 (3,890)	9,869	59,354 (2,245)
Income Tax Adjustment at 16%		(838) C		(1,295) C		648 C		(5,996) C		(2,461) C		(1,579) C		(9,187) C
Net Income After Taxes	\$ (8,287)	\$ 12,687	\$ 4,400	\$ (5,640) \$ 12,438	\$ 6,798	\$ (3,280) \$ (121)	\$ (3,401)	\$ 34,078 \$ (2,597)	\$ 31,481	\$ 17,341 \$ (4,423)	\$ 12,918	\$ 13,758 \$ (5,469)	\$ 8,290	\$ 59,354 \$ (11,382)

Notes:

- A) Adjusted for fair market compensation.
B) Adjusted for personal expenses.
C) Adjusted for taxes.

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Schedule E
Brough Trucking and Crane Service
Adjusted Balance Sheets
As December 31, 2007

	2007	Adjustments	Notes	Adjusted 2007
Assets				
Current Assets				
Cash	\$ 2,566			\$ 2,566
P/R Advances	-			-
Total Current Assets	2,566	-		2,566
Other Assets				
Deposit (Progressive/ WCF)	1,938			1,938
Loans to Shareholders	-			-
Total Other Assets	1,938	-		1,938
Fixed Assets				
Land	50,000	179,126	A	229,126
Machinery & Equipment	493,342	(134,292)	B	359,050
Accumulated Depreciation	(442,661)	442,661	B	-
Total Fixed Assets	100,681	487,495		588,176
Total Assets	<u>\$ 105,185</u>	<u>\$ 487,495</u>		<u>\$592,680</u>
Liabilities				
Current Liabilities				
Current Portion of Long-Term Debt	\$ 5,337			\$ 5,337
Other Current Liabilities	7,522			7,522
Total Current Liabilities	12,858	\$ -		12,858
Long-Term Liabilities				
Notes Payable	10,879			10,879
Loans from Shareholders	21,773			21,773
Total Long-Term Liabilities	32,651	-		32,651
Shareholders' Equity				
Capital Stock	10,000			10,000
Beginning Balance	40,438	487,495	C	527,933
Ordinary Income (Loss)	13,758			13,758
K-1 and M-1 Additions	-			-
K-1 and M-1 Deductions	-			-
Distributions	(4,521)			(4,521)
Total Shareholders' Equity	59,675	487,495		547,170
Total Liabilities and Shareholders' Equity	<u>\$ 105,185</u>	<u>\$ 487,495</u>		<u>\$592,680</u>
Control, Marketable Value				\$547,170
Less: Discount for Lack of Marketability			10%	(54,717)
Noncontrol, Nonmarketable Value				<u>\$492,453</u>

Notes:

- A) Adjusted land and building for appreciation, added value 7/8ths of the 81.03 acre property and the value of the 4 acre property.
B) Adjusted equipment values to appraisal done by Ron Liese.
C) Adjusted retained earnings to reflect prior adjustments.

000040

Schedule F
Brough Trucking and Crane Service
Summary of Equipment and Appraised Value
Appraisal Done by Ron Liese

ITEM	UNIT #	YEAR	DESCRIPTION	APPRAISED VALUE	COMMENTS
1		N/A	Pressure Washer	\$200	Fair Condition
2		N/A	Tool Box with Tools	400	Fair Condition
3		N/A	A.O. Smith DC Welder	100	Poor Condition
4		N/A	Metal Chop Saw	200	Good Condition
5		N/A	Air Compressor	300	Fair Condition
6		N/A	Cutting Torch w/Valves, hose and cart	100	Fair Condition
7		N/A	Hobart Welder	500	Good Condition
8		N/A	Transmission Jack and Engine Hoist	700	Good Condition
9		N/A	Clean Burn Waste Oil Shop Heater	800	Good Condition
10		N/A	Clean Burn Waste Oil Shop Heater	800	Good Condition
11		N/A	Pneumatic Jack	300	Fair Condition
12		2007	Dell Dimensions E520 Computer	400	Good Condition
13		N/A	Dell 966	100	Good Condition
14		N/A	Skill 8 Inch Drill Press	300	Good Condition
15		N/A	1 Inch Air Impact Wrench	250	Fair Condition
16		N/A	Heavy Duty Electric Grinder	100	Fair Condition
			966D Wheel Loader w/GP Bucket, Teeth, EROPS, 26.5 X 25 Tires, NOTE: No Serial Number available for this asset and not able to determine year of		
17		N/A	MFG. Value based upon photo as provided by owner.	40,000	Good Condition
18		N/A	Portable Welder Trailer w/Vise, Torch, work area	1,000	Fair Condition
19		N/A	4 Bay Steel Framed and Sided Shop and Office, NOTE: No square footage and no land size provided by owner.		Unable to Value with limited data
20		2004	Chevrolet 2500 4X4 Crew Cab Pickup VIN1GCGK13U73F166854	12,000	Good Condition
21		2003	GMC 3500 4X4 Dually Flatbed Rig Up Truck w/Gin Poles, Winch, VIN1GDKJ34284E395030	20,000	Good Condition
22		1998	GMC Yukon 4X4 SUV VIN1GKEK13R8WJ33114 w/V8, Auto Trans.	3,000	Fair Condition
23		1991	GMC Top Kick S/A Winch Rig Up Truck VIN1GDM7H1J7MJ507072	16,000	Good Condition
24		1978	Kenworth W900 T/A Winch Tractor VIN not provided	8,000	Fair Condition
25		1979	Kenworth W900 T/A Boom Truck VIN179627S W/National Hyd. Crane Capacity Unknown	32,000	Good Condition
26		1980	Kenworth W900 T/A Winch Tractor VIN161965S	14,000	Fair Condition
27		2000	Kenworth W900 T/A Winch Tractor VIN1NKWGGGGX07883843	50,000	Good Condition
			Grove 35 Ton Hydraulic Truck Crane No Crane SN available NOTE: Unable to determine boom length and diesel power unit MFG. Valued as average		
28		1982	condition Caterpillar 930 Wheel Loader No SN w/ Gp Bucket, Enclosed Cab, 17.5 X 25	35,000	Fair Condition
29		1984	Tires	12,000	Fair Condition
30			See Item #17 Cat 966D already valued	N/A	
31		1998	Lufkin T/A Spread Axle Step Deck Trailer 1L01B4823W1130788	9,000	Good Condition
32		1998	SPCN T/A Single Srop Lowboy Trailer VINUTTT17965	3,000	Fair Condition
			XL110HD 50 Ton 3Axle Double Drop Detachable Gooseneck Trailer		
33		2001	VIN4UJ3J053371L003085	32,000	Good Condition
34		1989	Commercial 40 ft. T/A Flatbed Trailer VIN1LOB4525K1084640	2,500	Fair Condition
			Trailize 3 Axle Lowboy Trailer w/Mechanical Folding Gooseneck Trailer		
35		1981	VIN1DA73E398BM006692	12,000	Fair Condition
36		1980	Lufkin T/A Flatbed Trailer VIN1L01B3627B1059246	4,500	Good Condition
37		1981	Lufkin T/A Flatbed Trailer VIN1L01B321XB159058	4,500	Good Condition
38		1981	Fufkin T/A Flatbed Float Trailer VIN not available	4,500	Good Condition
39		1995	Ranco T/A Single Gate Belly Dump Trailer VIN1R9BSE507SL008490	12,000	Good Condition
40		1980	Load King T/A Single Gate Belly Dump Trailer VIN8907	4,500	Fair Condition
41		1981	Blue and Red Skid Mount Fuel Tank w/Pump	10,000	Fair Condition
42		N/A	2 Each Silver Fuel Tanks w/pumps	12,000	Good Condition
43			Parts Not Able to Value without Inspection	N/A	
			80 Acres In Ballard NOTE: Not able to value with limited information and no ability to establish comparable sale data		
44				N/A	
Total Appraised Value Fair Market Value				<u>\$359,050</u>	

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Schedule G
Brough Trucking and Crane Service, Inc.
Calculation of Capitalization Rate

	For Net Income	For Cash Flow
Risk-free Rate at December 31, 2007	4.50%	4.50%
Average Equity Risk Premium	7.10%	7.10%
Micro-Cap Size Premium	6.27%	6.27%
Company Specific Risk Premium	5.00%	5.00%
Composite Cash Flow Discount Rate	<u>22.87%</u>	<u>22.87%</u>
Additional Increment for Earnings Discount Rate	<u>0.50%</u>	<u>0.00%</u>
Net Earnings/Cash Flow Discount Rate	23.37%	22.87%
Less: Expected Earnings Growth Rate	<u>3.56%</u>	<u>3.56%</u>
Net Earnings/Cash Flow Capitalization Rate	<u>19.81%</u>	<u>19.31%</u>
Adjustment for Current Year Net Income/Net Cash Flow Capitalization Rate	103.56%	103.56%
Current Year Net Income/Net Cash Flow Capitalization Rate	<u>19.12%</u>	<u>18.64%</u>

Schedule H
 Brough Trucking and Crane Service, Inc.
 Consumer Price Index
 1996 - 2007

Year	Index	Average Annual Growth
1996	156.9	2.95%
1997	160.5	2.29%
1998	163.0	1.56%
1999	166.6	2.21%
2000	172.2	3.36%
2001	177.1	2.85%
2002	179.9	1.58%
2003	184.0	2.28%
2004	188.9	2.66%
2005	195.3	3.39%
2006	201.6	3.23%
2007	207.3	2.83%

Average Compounded Growth Rate

2.56%

Sources:

www.bls.gov

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Schedule I
Brough Trucking and Crane Service, Inc.
Income Statements
For Years Ending December 31, 2001-2007 from Tax Returns

	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Income (Sales)	\$ 643,092	\$ 438,813	\$ 508,006	\$ 785,250	\$ 843,366	\$ 431,795	\$ 403,977
Deductions							
Accounting & Legal	1,800	2,740	1,800	2,157	2,888	6,151	
Advertising	2,069	1,436	1,946	1,985	1,086	1,288	2,561
Bank Charges	48	125		25	25		
Compensation of Officers	24,480	19,380		11,888	6,066	2,631	2,016
Contributions						1,100	
Delivery and Freight	26		155		206	10	
Depreciation	51,833	51,221	41,254	50,397	32,150	20,153	11,097
Dues and Subscriptions	972	1,319	1,009	1,409	593	729	
Fuel & Oil	32,270	12,162	9,769	32,251	46,388	66,670	
Gifts					1,285		
Insurance	34,526	59,912	48,295	56,263	56,158	41,325	
Interest	19,228	27,133	12,836	4,603	9,045	50	632
Meals & Entertainment		28	30	185	52	252	
Miscellaneous	137						
Office Expense	1,261	937	1,377	2,170			
Outside Services	176,336	114,824	161,159	247,751	284,227	7,356	153,220
Postage						2,895	
Promotions	807	550	675	525	2,014		
Rents	1,191	693	5,259	14,413	17,076	15,644	17,128
Repairs and Maintenance	38,357	20,549	38,026	36,710	28,629	24,450	40,178
Salaries and Wages	85,460	32,049	55,304	95,451	117,868	111,718	90,897
Supplies	130,748	60,981	90,339	97,561	132,807	70,693	
Taxes and Licenses	23,452	20,019	17,469	20,962	30,693	23,846	24,554
Telephone	4,297	4,081	4,196	4,622	5,290	4,734	
Tires	7,533	2,234	11,231	16,621	23,067	5,414	
Travel				19			
Utilities	16,298	11,702	9,127	8,846	10,361	10,930	
Total Deductions	<u>653,129</u>	<u>444,075</u>	<u>511,256</u>	<u>706,814</u>	<u>807,974</u>	<u>418,037</u>	<u>342,283</u>
Ordinary Income	<u>(10,037)</u>	<u>(5,262)</u>	<u>(3,250)</u>	<u>78,436</u>	<u>35,392</u>	<u>13,758</u>	<u>61,694</u>
K-1 Adjustments							
Sections 179 Depreciation				(44,173)	(18,000)		(2,500)
Capital Gain/Investment Income	1,750						160
Total K-1 Adjustments	<u>1,750</u>			<u>(44,173)</u>	<u>(18,000)</u>		<u>(2,340)</u>
M-1 Adjustments							
Depreciation		(28)					
Travel and Entertainment			(30)	(185)	(51)		
Penalties		(350)					
Total M-1 Adjustments		<u>(378)</u>	<u>(30)</u>	<u>(185)</u>	<u>(51)</u>		
Book Net Income	<u>\$ (8,287)</u>	<u>\$ (5,640)</u>	<u>\$ (3,280)</u>	<u>\$ 34,078</u>	<u>\$ 17,341</u>	<u>\$ 13,758</u>	<u>\$ 59,354</u>

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Schedule J
Brough Trucking and Crane Service, Inc.
Common-Size Income Statements
For Years Ending December 31, 2001-2007 from Tax Returns

	2001	2002	2003	2004	2005	2006	2007
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Income (Sales)							
Deductions							
Accounting & Legal	0.3%	0.6%	0.4%	0.3%	0.3%	1.4%	0.0%
Advertising	0.3%	0.3%	0.4%	0.3%	0.1%	0.3%	0.6%
Bank Charges	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Compensation of Officers	3.8%	4.4%	0.0%	1.5%	0.7%	0.6%	0.5%
Contributions	0.0%	0.0%	0.0%	0.0%	0.0%	0.3%	0.0%
Delivery and Freight	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Depreciation	8.1%	11.7%	8.1%	6.4%	3.8%	4.7%	2.7%
Dues and Subscriptions	0.2%	0.3%	0.2%	0.2%	0.1%	0.2%	0.0%
Fuel & Oil	5.0%	2.8%	1.9%	4.1%	5.5%	15.4%	0.0%
Gifts	0.0%	0.0%	0.0%	0.0%	0.2%	0.0%	0.0%
Insurance	5.4%	13.7%	9.5%	7.2%	6.7%	9.6%	0.0%
Interest	3.0%	6.2%	2.5%	0.6%	1.1%	0.0%	0.2%
Meals & Entertainment	0.0%	0.0%	0.0%	0.0%	0.0%	0.1%	0.0%
Miscellaneous	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Office Expense	0.2%	0.2%	0.3%	0.3%	0.0%	0.0%	0.0%
Outside Services	27.4%	26.2%	31.7%	31.6%	33.7%	1.7%	37.9%
Postage	0.0%	0.0%	0.0%	0.0%	0.0%	0.7%	0.0%
Promotions	0.1%	0.1%	0.1%	0.1%	0.2%	0.0%	0.0%
Rents	0.2%	0.2%	1.0%	1.8%	2.0%	3.6%	4.2%
Repairs and Maintenance	6.0%	4.7%	7.5%	4.7%	3.4%	5.7%	9.9%
Salaries and Wages	13.3%	7.3%	10.9%	12.2%	14.0%	25.9%	22.5%
Supplies	20.3%	13.9%	17.8%	12.4%	15.7%	16.4%	0.0%
Taxes and Licenses	3.6%	4.6%	3.4%	2.7%	3.6%	5.5%	6.1%
Telephone	0.7%	0.9%	0.8%	0.6%	0.6%	1.1%	0.0%
Tires	1.2%	0.5%	2.2%	2.1%	2.7%	1.3%	0.0%
Travel	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Utilities	2.5%	2.7%	1.8%	1.1%	1.2%	2.5%	0.0%
Total Deductions	101.6%	101.2%	100.6%	90.0%	95.8%	96.8%	84.7%
Ordinary Income	-1.6%	-1.2%	-0.6%	10.0%	4.2%	3.2%	15.3%
K-1 Adjustments							
Sections 179 Depreciation	0.0%	0.0%	0.0%	-5.6%	-2.1%	0.0%	-0.6%
Long-Term Capital Gain	0.3%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Total K-1 Adjustments	0.3%	0.0%	0.0%	-5.6%	-2.1%	0.0%	-0.6%
M-1 Adjustments							
Depreciation	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Travel and Entertainment	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Penalties	0.0%	-0.1%	0.0%	0.0%	0.0%	0.0%	0.0%
Total M-1 Adjustments	0.0%	-0.1%	0.0%	0.0%	0.0%	0.0%	0.0%
Book Net Income	-1.3%	-1.3%	-0.6%	4.3%	2.1%	3.2%	14.7%

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Schedule K
Brough Trucking and Crane Service
Balance Sheets
As of Year End December 31, 2001-2007 from Tax Returns

	2001	2002	2003	2004	2005	2006	2007
Assets							
Current Assets							
Cash	\$ (6,107)	\$ 893	\$ 3,852	\$ 795	\$ 2,081	\$ 2,566	\$ 210
P/R Advances		406	90				
Total Current Assets	(6,107)	1,299	3,942	795	2,081	2,566	210
Other Assets							
Other Assets	1,941	1,938	1,940	1,940	1,941	1,938	10,431
Loans to Shareholders	67,601			54,078	54,078		
Total Other Assets	69,542	1,938	1,940	56,018	56,019	1,938	10,431
Fixed Assets							
Land	50,000	50,000	50,000	50,000	50,000	50,000	50,000
Machinery & Equipment	323,650	386,744	386,744	495,525	493,342	493,342	495,842
Accumulated Depreciation	(185,313)	(236,534)	(277,788)	(372,358)	(422,508)	(442,661)	(456,258)
Total Fixed Assets	188,337	200,210	158,956	173,167	120,834	100,681	89,584
Total Assets	<u>\$ 251,772</u>	<u>\$ 203,447</u>	<u>\$ 164,838</u>	<u>\$ 229,980</u>	<u>\$ 178,934</u>	<u>\$ 105,185</u>	<u>\$100,225</u>
Liabilities							
Current Liabilities							
Current Portion of Long-Term Debt	\$ 42,441	\$ 42,441	\$ 42,441	\$ 62,624	\$ 42,441	\$ 5,337	\$ 5,567
Other Current Liabilities	5,779	2,409	1,805	4,921	4,816	7,522	9,471
Total Current Liabilities	48,220	44,850	44,246	67,545	47,257	12,858	15,038
Long-Term Liabilities							
Notes Payable	201,839	162,524	113,976	111,741	87,363	10,879	4,845
Loans from Shareholders			13,823	23,823	23,823	21,773	21,773
Total Long-Term Liabilities	201,839	162,524	127,799	135,564	111,186	32,651	26,618
Shareholders' Equity							
Capital Stock	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Beginning Balance	33,192	(8,287)	(13,927)	(17,207)	16,871	40,438	49,677
Ordinary Income (Loss)	(10,037)	(5,262)	(3,250)	78,436	35,392	13,758	61,694
K-1 and M-1 Additions	1,750						160
K-1 and M-1 Deductions		(378)	(30)	(44,358)	(18,051)		(2,500)
Distributions	(33,192)			(23,721)	(23,721)	(4,521)	(60,462)
Total Shareholders' Equity	1,713	(3,927)	(7,207)	26,871	20,491	59,675	58,569
Total Liabilities and Shareholders' Equity	<u>\$ 251,772</u>	<u>\$ 203,447</u>	<u>\$ 164,838</u>	<u>\$ 229,980</u>	<u>\$ 178,934</u>	<u>\$ 105,185</u>	<u>\$100,225</u>

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Schedule L
Brough Trucking and Crane Service
Common-Size Balance Sheets
As of Year End December 31, 2001-2007 from Tax Returns

	2001	2002	2003	2004	2005	2006	2007
Assets							
Current Assets							
Cash	-2.4%	0.4%	2.3%	0.3%	1.2%	2.4%	0.2%
P/R Advances	0.0%	0.2%	0.1%	0.0%	0.0%	0.0%	0.0%
Total Current Assets	-2.4%	0.6%	2.4%	0.3%	1.2%	2.4%	0.2%
Other Assets							
Deposit (Progressive/ WCF)	0.8%	1.0%	1.2%	0.8%	1.1%	1.8%	10.4%
Loans to Shareholders	26.9%	0.0%	0.0%	23.5%	30.2%	0.0%	0.0%
Total Other Assets	27.6%	1.0%	1.2%	24.4%	31.3%	1.8%	10.4%
Fixed Assets							
Land	19.9%	24.6%	30.3%	21.7%	27.9%	47.5%	49.9%
Machinery & Equipment	128.5%	190.1%	234.6%	215.5%	275.7%	469.0%	494.7%
Accumulated Depreciation	-73.6%	-116.3%	-168.5%	-161.9%	-236.1%	-420.8%	-455.2%
Total Fixed Assets	74.8%	98.4%	96.4%	75.3%	67.5%	95.7%	89.4%
Total Assets	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Liabilities							
Current Liabilities							
Current Portion of Long-Term Debt	16.9%	20.9%	25.7%	27.2%	23.7%	5.1%	5.6%
Other Current Liabilities	2.3%	1.2%	1.1%	2.1%	2.7%	7.2%	9.4%
Total Current Liabilities	19.2%	22.0%	26.8%	29.4%	26.4%	12.2%	15.0%
Long-Term Liabilities							
Notes Payable	80.2%	79.9%	69.1%	48.6%	48.8%	10.3%	4.8%
Loans from Shareholders	0.0%	0.0%	8.4%	10.4%	13.3%	20.7%	21.7%
Total Long-Term Liabilities	80.2%	79.9%	77.5%	58.9%	62.1%	31.0%	26.6%
Shareholders' Equity							
Capital Stock	4.0%	4.9%	6.1%	4.3%	5.6%	9.5%	10.0%
Beginning Balance	13.2%	-4.1%	-8.4%	-7.5%	9.4%	38.4%	49.6%
Ordinary Income (Loss)	-4.0%	-2.6%	-2.0%	34.1%	19.8%	13.1%	61.6%
K-1 and M-1 Additions	0.7%	0.0%	0.0%	0.0%	0.0%	0.0%	0.2%
K-1 and M-1 Deductions	0.0%	-0.2%	0.0%	-19.3%	-10.1%	0.0%	-2.5%
Distributions	-13.2%	0.0%	0.0%	0.0%	-13.3%	-4.3%	-60.3%
Total Shareholders' Equity	0.7%	-1.9%	-4.4%	11.7%	11.5%	56.7%	58.4%
Total Liabilities and Shareholders' Equity	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

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Schedule M
Brough Trucking and Crane Service, Inc.
Statement of Cash Flows
For the Years Ending December 31, 2002 - 2007

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Net Income	\$ (5,640)	\$ (3,280)	\$ 34,078	\$ 17,341	\$ 13,758	\$ 59,354
Cash Flow from Operating Activities						
Depreciation	51,221	41,254	50,397	32,150	20,153	11,097
Change in P/R Advances	(406)	316	90	-	-	-
Change in Deposits	3	(2)	-	(1)	3	(8,493)
Change in Current Liabilities	(3,370)	(604)	3,116	(105)	2,706	1,949
Net Cash Flow from Operating Activities	<u>41,808</u>	<u>37,684</u>	<u>87,681</u>	<u>49,385</u>	<u>36,620</u>	<u>63,907</u>
Cash Flows from Investing Activities						
Change in Machinery & Equipment	(63,094)	-	(108,781)	2,183	0	(2,500)
Change in Loans to Shareholders	<u>67,601</u>	<u>-</u>	<u>(54,078)</u>	<u>-</u>	<u>54,078</u>	<u>-</u>
Net Cash Flow from Investing Activities	<u>4,507</u>	<u>-</u>	<u>(162,859)</u>	<u>2,183</u>	<u>54,078</u>	<u>(2,500)</u>
Cash Flow from Financing Activities						
Change in Current Long-Term Debt	-	-	20,183	(20,183)	(37,104)	230
Change in Notes Payable	(39,315)	(48,548)	(2,235)	(24,378)	(76,484)	(6,034)
Change in Loans from Shareholders	-	13,823	10,000	-	(2,050)	0
Change from Tax to Internal R/E	-	-	-	-	29,947	-
Section 179 Depreciation	-	-	44,173	18,000	-	2,500
Distributions	<u>-</u>	<u>-</u>	<u>-</u>	<u>(23,721)</u>	<u>(4,521)</u>	<u>(60,462)</u>
Net Cash Flow from Financing Activities	<u>(39,315)</u>	<u>(34,725)</u>	<u>72,121</u>	<u>(50,282)</u>	<u>(90,213)</u>	<u>(63,765)</u>
Net Increase (Decrease) in Cash	7,000	2,959	(3,057)	1,286	485	(2,357)
Beginning Cash	(6,107)	893	3,852	795	2,081	2,566
Ending Cash	<u>\$ 893</u>	<u>\$ 3,852</u>	<u>\$ 795</u>	<u>\$ 2,081</u>	<u>\$ 2,566</u>	<u>\$ 208</u>

Schedule N
Brough Trucking and Crane Service, Inc.
Calculation of Marketability Discount

<u>Restricted Stock Studies</u>	<u>Average Discount</u>
SEC, Overall Average	25.80%
Milton Gelman	33.00%
Management Planning Study	27.10%
Robert Trout	33.50%
Robert Moroney	35.60%
Michael Maher	35.40%
Standard Research Associated, Inc.	45.00%
Silber Study	33.80%
Average Marketability Discount	<u>33.65%</u>

Schedule O
Brough Trucking and Crane Service, Inc.
Pre-IPO Studies

Robert W. Baird & Co. Studies

Calculation of Value of Marketability as Illustrated in Initial Public Offerings
of Common Stock

Study	Number of IPO Prospectuses Reviewed	Number of Qualifying Transactions	Discount	
			Mean	Median
1995-1997	732	91	43%	42%
1994-1995	318	46	45%	45%
1991-1993	443	54	45%	44%
1990-1992	266	35	42%	40%
1989-1990	157	23	45%	40%
1987-1989	98	27	45%	45%
1985-1986	130	21	43%	43%
1980-1981	97	13	60%	66%
	2241	310	44%	<u>43%</u>

Willamette Management Associates Studies

Summary of Discounts for Private Transaction P/E Multiples
Compared to Public Offering P/E Multiples Adjusted for
Changes in Industry P/E Multiples

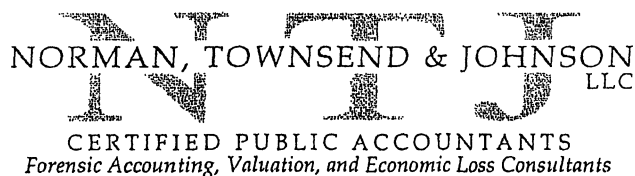
Time Period	Number of Companies Analyzed	Number of Transactions Analyzed	Median Discount
1975-78	17	31	54.7%
1979	9	17	62.9%
1980-82	58	113	55.5%
1983	85	214	60.7%
1984	20	33	73.1%
1985	18	25	42.6%
1986	47	74	47.4%
1987	25	40	43.8%
1988	13	19	51.8%
1989	9	19	50.3%
1990	17	23	48.5%
1991	27	34	31.8%
1992	36	75	51.7%
1993	51	110	53.3%
1994	31	48	42.0%
1995	42	66	58.7%
1996	17	22	44.3%
1997	34	44	35.2%
1998	14	21	49.4%
1999	22	28	27.7%
2000	13	15	31.9%
			<u>48.4%</u>

Schedule P
Brough Trucking and Crane Service, Inc.
Analysis of Factors Impacting Discount for Lack of Marketability

Factor	Impact on Lack of Marketability Discount	Notes:
Baseline Marketability Discount Based on Results of Restricted Stock and Pre-IPO Studies	33%	Baseline indicator of discount derived from Restricted Stock and Pre-IPO Studies (See Schedules N and O)
Factors Impacting Marketability		
Financial Statement Analysis	Neutral	The Company has experiences both losses and net income. Recent years have generated positive income.
Capital Structure (Debt v. Equity)	Decreases Discount	The Company has a low level of debt compared to fair market value of equity.
Dividend/Distribution Policy	Neutral	The Company has made distributions in the past.
Nature of the Company	Increases Discount	The Company operates in an industry that experiences frequent cycles in growth and retraction.
Management	Neutral	Strength of management is reasonable.
Amount of Control in Subject Shares	Decreases Discount	Control position has the ability to operate the company and dispose of assets. This control position results in a downward influence on the marketability discount.
Restrictions on Transferability	Neutral	No restrictions on transferability of ownership interests.
Holding Period for the Stock	Neutral	No intentions to liquidate assets.
Company Redemption Policy	Neutral	No mandatory policy to redeem ownership interests.
Costs of Public Offering	Neutral	No intentions of ownership to pursue a public offering.
Overall Recommendation	10%	

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ATTACHMENT ONE



R. BRAD TOWNSEND, MBA, CPA/ABV, DABFA
Curriculum Vitae

R. Brad Townsend is a Managing Member of the firm of Norman, Townsend & Johnson, a Salt Lake City-based accounting firm which specializes in business valuation, forensic accounting and economic loss consulting. He was previously with the Financial Analysis Group of the international accounting firm of KPMG Peat Marwick and the consulting firm of Norman Loebbecke Associates prior to forming Norman, Townsend & Johnson. Mr. Townsend has 21 years of experience providing business valuation, investigative accounting, and economic loss services to the business community.

Professional Experience

Mr. Townsend's professional experience includes substantial involvement in over 800 engagements in a wide variety of business settings. He has provided services in both general business as well as litigation settings. His experience includes providing diverse consulting services in the following areas:

Business/Intellectual Property Valuation - Valuation of businesses and intellectual property in a variety of industries

Investigative Accounting/Fraud Analysis - Determination of flow, possession and ownership of business and personal assets and liabilities

Business Interruption - Determination of total and insured losses resulting from various types of business interruptions

Economic Loss/Damage Calculation - Calculation of monetary damages incurred in a variety of business and personal settings

Contract Evaluation - Evaluation of economic effects of compliance/non-compliance with contract terms in connection with contract disputes and litigation

Feasibility Studies - Projection of operating results and debt service coverages and preparation of projected financial statements

Market Studies - Evaluation of economic and competitive environment affecting subject company

Asset Search/Identification - Identification and valuation of assets through analysis of accounting records

Statistical Analysis - Projection of population characteristics using statistical sampling methods

Troubled Loan Analysis - Evaluation of debtor ability to service debt through financial analysis

Mr. Townsend has provided expert witness testimony on 128 occasions in State and Federal court proceedings as well as Arbitration and Governmental Agency hearings. He has appeared as an expert witness in the states of Utah and Idaho. He has provided testimony on a wide variety of business valuation, investigative accounting and economic loss matters.

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Mr. Townsend has provided consulting services in a variety of business settings including general consulting as well as litigation consulting services. He has been retained to provide services in the following business arenas:

- ♦ General Corporate Litigation
- ♦ Accountant Liability Actions
- ♦ Personal Injury/Wrongful Death Actions
- ♦ Insurance Claim Adjusting and Litigation
- ♦ Troubled Loan Monitoring
- ♦ Business and Personal Financial Planning
- ♦ Wrongful Termination Litigation
- ♦ Dissenting Shareholder Actions
- ♦ Marital Dissolutions
- ♦ Business Mergers and Acquisitions
- ♦ Offerings of Registered Securities
- ♦ Bankruptcy
- ♦ Utility Rate Setting
- ♦ Income Tax Reporting

Mr. Townsend has experience in financial matters related to a number of different industries. He has provided services and performed analysis in the following general industries:

- Health Care
- Industrial Wholesale
- Commercial Retail
- Real Estate
- Insurance
- Financial Institution
- Manufacturing
- Agriculture
- Utilities
- Professional Services
- Hotel
- Professional Sports
- Local Government
- Steel Milling
- Construction
- Automobile
- Leasing
- Oil Refining
- Car Rental
- Mining

Mr. Townsend has served as an instructor in a number of seminars and workshops for various professional groups. He has taught courses for financial planning, professional accountant and legal practitioner organizations. Mr. Townsend has lectured on such topics as business valuation, asset identification and tracing, income assessment and aspects of financial planning.

Professional Licenses and Affiliations

Mr. Townsend is a Certified Public Accountant, a member of various professional organizations and has served in volunteer business-related positions as follows:

- ▶ Certified Public Accountant, licensed in the State of Utah
- ▶ Accredited in Business Valuation, American Institute of Certified Public Accountants
- ▶ Member, American Institute of Certified Public Accountants
- ▶ Member, Utah Association of Certified Public Accountants
- ▶ Member, American College of Forensic Examiners
- ▶ Diplomate, American Board of Forensic Accounting
- ▶ Member, Association of Certified Fraud Examiners
- ▶ Member, International Association of Collaborative Professionals
- ▶ Former Board Member, Finance Committee Chairman and Treasurer, HawkWatch International
- ▶ Former Vice-Chairman, UACPA Litigation Services Committee

Educational Background

Mr. Townsend graduated from the University of Utah, with honors, with a Bachelor of Science degree in Accounting. He also earned a Master in Business Administration from the University of Utah. He has participated in various continuing education programs during the last 21 years with emphasis in business valuation, economic loss theory, taxation and fraud investigation.

ATTACHMENT TWO

Brough v. Brough
Documents Available to NTJ

No.	Document Discription
1.	Equipment appraisal done by Ron Lease
2.	HUD Settlement Statement for 81 acre property
3.	Tax assessment on 4369 East Main Street property
4.	Tax assessment on 6.6 acre property
5.	Warranty Deed on 81 acre property
6.	Lease agreement between Brough Trucking and Cardwell Distributing
7.	Warranty Deed between Pine Tech Industries and Richard and Kathy Brough
8.	Tax assessment on 151 North 4217 East property
9.	Brough Trucking & Crane Service tax returns 2001 - 2007
10.	Credit card statements for Brough Trucking
11.	Appraisal of personal residence at 3091 W. 7875 N
12.	2001 - 2002 check registers for Brough Trucking
13.	N J Trucking Inc. Tax Returns 1993, 1995-1997, 1999
14.	Brough Trucking and Crane Service, Inc. Tax Returns 2001-2005
15.	Brough Trucking & Crane Service, Inc. Financial Statements for December 31, 2001-2006
16.	Brough Trucking & Crane Service, Inc. Financial Statements for March 31, 2005
17.	CC Statements 0031 11/12/03 - 03/12/03 04/12/03 - 05/13/03
18.	CC Statements 1688 12/22/03 -10/19/03
19.	CC Statements 2760 05/12/06 - 07/27/06 09/03/06 - 09/13/06
20.	CC Statements 3052 07/13/03 - 05/01/06
21.	CC Statements 3383 01/05/02 - 03/18/02
22.	CC Statements 3455 09/05/06 - 09/05/06
23.	CC Statements 4682 11/18/04 03/03/04 - 03/19/04
24.	CC Statements 7518 05/30/02 - 06/14/02 08/29/02 - 09/11/02 10/28/02 - 12/16/02 01/26/03 - 09/07/03
25.	10/22/03 - 12/05/03 01/24/05 - 04/13/05
26.	CC Statements 7624 12/09/99 - 04/03/00 05/07/03 - 11/27/03 02/10/05 - 07/08/05
27.	CC Statements 5846 04/29/04 - 07/14/04 08/20/04 - 10/11/04
28.	Respondent's Response to Petitioner's First Set of Interrogatories and Request for Production of Doc.
29.	October 7, 2007 letter to NTJ regarding financial statements and other documents requested
30.	Asset holdings sent by Mr. Brough
31.	Warranty Deeds on land
32.	Property tax notices
33.	Documentation on company fraud against Brough Trucking
34.	Deposition of Richard James Brough
35.	Average annual expenditure and characteristics, Consumer Expenditure Survey, 2005-2006

RANDALL GAITHER #1141
Attorney for the Respondent
159 West 300 South Broadway #105
Salt Lake City, Utah 84101
Telephone: (801) 531-1990

DISTRICT COURT
DUCHESS COUNTY, UTAH

SEP 12 2008

BY J. FREE, CLERK

ORIGINAL

IN THE EIGHT DISTRICT COURT IN AND FOR DUCHESNE COUNTY
ROOSEVELT DEPARTMENT, STATE OF UTAH

KATHRYN C. BROUGH,)	
	)	MOTION FOR NEW TRIAL
Petitioner,)	
)	
vs.)	
)	
RICHARD JAMES BROUGH,	)	Judge: JOHN R. ANDERSON
)	
Respondent.	)	Case No. 054000084

The Respondent, by and through his attorney of record, hereby moves the Court to grant a new trial in these proceedings on all or part of the issues; or in the alternative pursuant to Rule 59 of the *Utah Rules of Civil Procedure* and that the Court amend the *Findings of Fact & Conclusions of Law*, entered September 4, 2008 without Notice, or to allow for oral argument. In the next alternative the Respondent requests the Court issue a Memorandum Decision as required by Rule 52 of the *Utah Rules of Civil Procedure* and a new *Decree of Divorce*. This Motion is based upon the following grounds and reasons:

1. Irregularity in the procedure of the Court exist in these proceedings because the Minute Entry and the ruling issued by the Court from the bench after the trial

indicates that the Court would prepare a written ruling. No findings were announced in open court. No ruling was issued by Memorandum Decision or otherwise. The Court has never explained the adoption by the Court of the documents prepared by the Attorney for the Petitioner.

2. Under the facts and circumstances, the Respondent requests either a new trial, a written ruling of the Court, and/or an opportunity to present final oral argument.

3. The current procedure followed by the Court has denied the Respondent a fair and equitable divorce trial.

4. Counsel for the Respondent complied with the court ordered procedure in submitting a "proposed" findings to the Court.

5. The Judgment awarded against the Respondent is excessive under Rule 59(a)(5) of the *Utah Rules of Civil Procedure* in any of the following aspects and should be reconsidered on any of the following grounds:

a. The *Decree of Divorce* awards to the Petitioner substantial pre-marital business property and pre-marital property owned by the Respondent without required findings as to separate property.

b. The award of \$386,500.00 grants to the Petitioner an award of the value of the business which does not fairly allocate liabilities of the business and therefore the award is unfair and inequitable.

c. If the Court did not rule that the pre-nuptial agreement was void

or non-effective, then the evidence and exhibits have shown that Mr. Brough owned much of the equipment which was used for value of the business prior to the marriage.

d. The *Decree of Divorce* awards the Petitioner in excess of \$20,000.00 in legal fees and costs. This award is inequitable and excessive in that it requires the Respondent to pay that amount to the Petitioner in light of the fact that she has been awarded a substantial cash settlement from which she can pay her promissory note for legal fees.

6. Pursuant to Rule 59 of the *Utah Rules of Civil Procedure* the manner in which the Judgment was entered appears to have been given under the influence of prejudice against the Respondent in that the Court adopted 100% of the proposed findings submitted by the Petitioner and failed to include any proposed findings, rulings or language submitted by the Respondent even if based on objective, undisputed evidence introduced by the Respondent at trial.

7. The *Findings of Fact & Conclusions of Law* and *Decree of Divorce* is an error of law in this divorce case in that best practice in divorce matters require consideration by the Court of separate property owned prior to the marriage and an equitable balancing of issues and awards.

8. The ruling concerning the pre-nuptial agreement constitutes an error in law and is contrary to the evidence introduced at trial, including the closing argument of the Attorney for the Petitioner who indicated that the pre-nuptial agreement was effective.

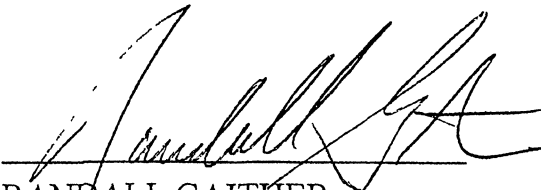
Therefore the Court should determine the scope of the pre-nuptial agreement.

9. The manner of entry, lack of notice and error in law has denied the Respondent the opportunity to object to the *Findings of Fact & Conclusions of Law* and *Decree of Divorce* or to receive a copy of the proposed Judgement.

10. An Affidavit of Randall Gaither, Attorney for the Respondent, is submitted in support of this Motion.

11. A Memorandum is submitted in support of this Motion.

DATED this 11 day of September, 2008.




RANDALL GAITHER
Attorney for the Respondent

DELIVERY CERTIFICATE

I hereby certify that a true and correct copy of the foregoing MOTION FOR NEW TRIAL was delivered to:

CLARK B. ALLRED
Allred & McClellan, P.C.
72 North 300 East
Roosevelt, Utah 84066
Fax: (435)722-3928

DATED this _____ day of September, 2008.

A handwritten signature in black ink, appearing to read "Clark B. Allred", is written over a horizontal line.

JOANNE McKEE, CLERK
BY _____ DEPUTY

ORIGINAL

Case No. 054000084

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The Respondent submits that it is highly unusual to allow the Attorney for one party in a divorce action to unilaterally draft 100% of the findings and a Decree to be adopted in totality by the Court after a contested trial. This procedure is not consistent with the rules and gives an impression of unfairness and prejudice.

Counsel for the Respondent has tried cases before the Roosevelt Department of the Duchesne District Court and never encountered this procedure. The Court's apparent procedure in ruling on a contested divorce by either accepting or rejecting proposed findings in totality and adopt one or the other findings is unique. The procedure raises issues of an inappropriate abdication or delegations of judicial function.

In *Hoth v. White*, 799 P.2d 213 (Utah 1990) the Court stated:

As to appellants' strange assertion that the court should not draft its own findings, rule 52(a) of the Utah Rules of Civil Procedure **gives the court the responsibility of finding the facts and stating its Conclusions of law and judgment.** See *Boyer Co. v. Lignell*, 567 P.2d 1112, 1113-4 (Utah 1977). **The court may ask the prevailing counsel to submit findings to aid the court in making these necessary findings. Id. at 1113. However, the court should not "mechanically adopt" these findings.** Id. The trial court thus has the ultimate discretion in determining the findings of fact and Conclusions of law.

In *Boyer Co. v. Lignell*, 567 P.2d 1112, 1113-4 (Utah 1977), the Court heard objections from counsel before adopting findings of opposing counsel that the court ruled had prevailed. The finding of facts "is an important part of the judicial function," one that is designed to flesh out the rationale for the decision and one that "the Judge cannot surrender... to counsel." *Wright & Miller, Federal Practice and Procedure* § 2578 (1971) Pursuant to article VIII, section 1 of the *Utah Constitution*, "the judicial power of

the state shall be vested in a Supreme Court, in a trial court of general jurisdiction . . . ,
and in such other courts as the Legislature by statute may establish." Utah Const. art. VIII,
§ 1

In *Stonehocker v. Stonehocker*, 176 P.3d 476, 2008 UT App 11 (Utah App.
01/10/2008), the Court noted the importance of the findings in a divorce matter stating:

Rule 52(a) of the Utah Rules of Civil Procedure, which governs findings of fact, states that "[i]t will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court." Utah R. Civ. P. 52(a); see also *Erwin v. Erwin*, 773 P.2d 847, 849 (Utah Ct. App. 1989) ("In assessing the sufficiency of the findings . . . we are not confined to the contents of a particular document entitled 'Findings', rather, the findings may be expressed orally from the bench or contained in other documents . . . "). Furthermore, "[a]dequate findings are . . . necessary for [appellate courts] to perform [their] assigned review function." *Smith v. Smith*, 726 P.2d 423, 426 (Utah 1986). Here, the trial court entered two documents summarizing its findings the July 5, 2005 Memorandum Decision and the January 3, 2006 Findings of Fact and Conclusions of Law. The trial court also made oral findings at the Clarification Hearing. Below, we consider the challenge to the findings of fact as we address each substantive issue. In doing so, we review the written and oral findings of fact together to determine if they are sufficient to support the trial court's rulings. We note, however, that for purposes of appellate review, written findings are the better practice because they reduce the likelihood of ambiguity created by an incomplete or unclear record. We can find no indication, either in the oral and written findings or elsewhere in the record, of the classification of the relevant items as marital or separate property. Furthermore, despite careful review of the trial transcript and the written and oral findings, we can find no place where the trial court assigned values to the various items of property.

The procedure in this matter is even more prejudicial because Mr. Brough and his attorney were awaiting a ruling by Memorandum and were never given notice of findings

that the Court adopted and filed without an order to have the *de facto* ruling served on the parties. Further, the final Decree should have been submitted to counsel for the Respondent with an opportunity to object to the Decree and Judgements. **Rule 7 of The Utah Rules of Civil Procedure** states as follows:

(f) Orders.

1. (f)(1) An order includes every direction of the court, including a minute order entered in writing, not included in a judgment. An order for the payment of money may be enforced in the same manner as if it were a judgment. **Except as otherwise provided by these rules, any order made without notice to the adverse party may be vacated or modified by the judge who made it with or without notice. Orders shall state whether they are entered upon trial, stipulation, motion or the court's initiative.**

(f)(2) Unless the court approves the proposed order submitted with an initial memorandum, or unless otherwise directed by the court, **the prevailing party shall, within fifteen days after the court's decision, serve upon the other parties a proposed order in conformity with the court's decision.** Objections to the proposed order shall be filed within five days after service. The party preparing the order shall file the proposed order upon being served with an objection or upon expiration of the time to object.

The Petitioner was not the prevailing party until the Court adopted the findings drafted by the Petitioner. Any Decree should have been submitted to allow objections to be filed. The Petitioner's attorney was never requested in open court or by any written order to prepare a final judgement to be submitted without notice to the Respondent.

POINT II

NO DIVORCE DECREE HAS BEEN ENTERED IN THESE PROCEEDINGS.

A clerical error has occurred because Counsel for the Respondent was asked by the Court to prepare a *Decree of Divorce* dissolving the marriage relationship and ruled in open Court that a Decree would be signed when submitted. Counsel prepared and submitted the Decree and no objection was filed as of the date by Memorandum of opposing counsel. The Decree actually divorcing the parties has not been entered by the Court even though this is the only ruling from the bench made in the presence of both parties.

POINT III

THE DIVORCE DECREE PREPARED AND AUTHORIZED BY THE ATTORNEY FOR THE PETITIONER AWARDS EXCESSIVE DAMAGES AND SHOULD BE RECONSIDERED.

The Respondent requests and opportunity to file objections and have a hearing as to the *Findings of Fact & Conclusions of Law* and to present evidence or arguments concerning the Judgment and the terms of the Decree. Further the Decree should be set aside and vacated because of the procedural irregularities. This is not a default proceeding but a contested trial.

The following excessive Judgments in the Decree and any findings should be amended or vacated because:

1. The *Decree of Divorce* awards to the Petitioner substantial pre-marital property owned by the Respondent based upon findings drafted to suggest joint

marital interest which is contrary to the evidence.

2. The award of \$386,500.00 grants to the Petitioner an award of the value of the business which does not take into account the liabilities of the business and the award is unfair and inequitable.

3. The evidence has shown that Mr. Brough owned most of the equipment which was used for value of the business prior to the marriage. The Respondent's pre-marital property has been unfairly awarded by adopting and entering the findings and Decree unilaterally prepared by Counsel for the Petitioner.

4. The *Decree of Divorce* awards the Petitioner in excess of \$20,000.00 in legal fees and costs. This award is inequitable and excessive in that it requires the Respondent to pay that amount to the Petitioner in light of the fact that the Petitioner has been awarded a substantial cash settlement and can afford to pay for her own attorney fees and costs. Any findings as to legal fees must take into account the judgements in the action.

5. The Petitioner should be required to pay for at least one-half, if not all, of the Petitioner's expert witness fees for which Mr. Brough was required to advance funds prior to the trial. This award is excessive in light of the ruling of the Court granting her one half of the business and a cash award.

It is inequitable and unfair to shift the costs of the Petitioner's expert witnesses and

the Petitioner's attorney fees to the Respondent if the Petitioner is obtaining over \$300,000.00 as a result of the divorce proceedings. The Petitioner testified that she had been making payments to her attorney and can clearly pay off any promissory note of legal fees from the Judgement. Further, the only reason Mr. Brough had to pay one-half of her expert witness fees was because she could not afford them during the proceedings and common sense dictates that if she is given any kind of substantial award she can afford to pay at least one-half of the costs.

Further, the Petitioner stated that she was not interested in the equipment and property Mr. Brough owned prior to the marriage and the ruling awarding her one-half of the business which the value was based substantially on equipment has resulted in her receiving a wind-fall of property. Therefore good cause exists to set aside the Judgemtn and order a new trial.

POINT IV

THE RELIEF REQUESTED IS SUPPORTED BY THE FOLLOWING RULES OF PROCEDURE.

Rule 52 of Civil Procedure . Findings by the court.

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court **shall find the facts specially and state separately its conclusions of law thereon**, and judgment shall be entered pursuant to Rule 58A; in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which

constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. **It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court.** The trial court need not enter findings of fact and conclusions of law in rulings on motions, except as provided in Rule 41(b). The court shall, however, issue a brief written statement of the ground for its decision on all motions granted under Rules 12(b), 50(a) and (b), 56, and 59 when the motion is based on more than one ground.

(b) Amendment. Upon motion of a party made not later than 10 days after entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made either a motion to amend them, a motion for judgment, or a motion for a new trial.

Rule 59 of the *Utah Rules of Civil Procedure*. New trials; amendments of judgment.

(a) Grounds. Subject to the provisions of Rule 61, a new trial may be granted to all or any of the parties and on all or part of the issues, for any of the following causes; provided, however, that on a motion for a new trial in an action tried without a jury, **the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment:**

(a)(1) **Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion by which either party was prevented from having a fair trial.**

(a)(2) Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict, or to a finding on any question submitted to them by the court, by resort to a determination by chance or as a result of bribery, such misconduct may be proved by the affidavit of any one of the jurors.

(a)(3) Accident or surprise, which ordinary prudence could not have guarded against.

(a)(4) Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.

(a)(5) **Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice.**

(a)(6) **Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.**

(a)(7) **Error in law.**

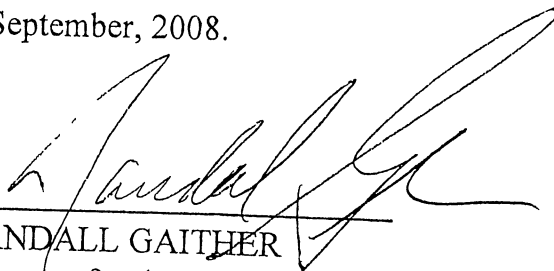
Rule 62. Stay of proceedings to enforce a judgment.

(a) Delay in execution. No execution or other writ to enforce a judgment may issue until the expiration of ten days after entry of judgment, unless the court in its discretion otherwise directs.

(b) **Stay on motion for new trial or for judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of, or any proceedings to enforce, a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).**

(d) Stay upon appeal. When an appeal is taken, the appellant by giving a supersedeas bond may obtain a stay, unless such a stay is otherwise prohibited by law or these rules. The bond may be given at or after the time of filing the notice of appeal. The stay is effective when the supersedeas bond is approved by the court.

DATED this 11 day of September, 2008.



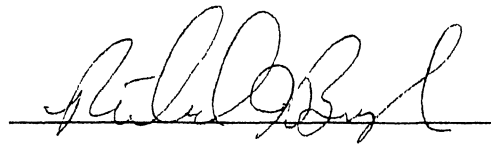
RANDALL GAITHER
Attorney for the Respondent

DELIVERY CERTIFICATE

I hereby certify that a true and correct copy of the foregoing MEMORANDUM IN
SUPPORT OF PENDING MOTIONS was delivered to:

CLARK B. ALLRED
Allred & McClellan, P.C.
72 North 300 East
Roosevelt, Utah 84066
Fax: (435)722-3928

DATED this 12 day of September, 2008.

A handwritten signature in cursive script, appearing to read "Clark B. Allred", is written over a horizontal line.

2. Having tried divorce cases for over thirty years in proceedings throughout the State of Utah each party may submit "proposed" findings which usually function as each parties' argument of legal position to the Court when the Court has not yet made a ruling. In this case I submitted "proposed" findings and not final *Findings of Fact and Conclusions of Law* authorized by any ruling of the Court. Even if a prevailing party is directed to prepare findings based on an oral ruling, the opposing party is given an opportunity to object.

3. As of the date of this Affidavit, I have not received any notice of ruling or Memorandum Decision from the Court. The first document that I received was a two-page *Notice of Entry of Divorce Decree* signed by the Attorney for the Petitioner on September 4, 2008. This document was received on the late afternoon of Friday, September 5, 2008.

4. As of Friday the 5th of September, I had not received any notice that the Court signed or entered the proposed *Findings of Fact & Conclusions of Law*, which submitted by the Attorney for the Petitioner.

5. I had prepared a *Decree of Divorce* and submitted it to the Court prior to August 8, 2008 after the Court bifurcated the proceedings and granted the divorce from the bench at the end of the divorce trial.

6. On Monday, September 8, 2008, I requested that the secretary from the Respondent's business go to the Court to retrieve a copy of the *Findings of Fact &*

Conclusions of Law and Decree which had been entered but never served by the Clerks or counsel. At that time the agent for Mr. Brough was only given a copy of a signed *Decree of Divorce* in this matter which corresponds identically to the proposed findings submitted by the Attorney for the Petitioner in August of 2008 even though not requested by the Court at the conclusions of the trial.

7. I contacted the Clerk of the Court on Monday, September 8th, 2008 to attempt to obtain a copy of the *Findings of Fact*. The Clerk indicated that the proposed Findings of Fact, Conclusions of Law and Memorandum prepared and submitted by my office were at the Courthouse. I was also told that there was no ruling or Memorandum Decision on file.

8. During my conversation with the Clerk of the Court, the Clerk indicated that there were undisclosed reasons why she needed to speak with Judge Anderson, but could not talk with him regarding this issue until Monday, September 15, 2008. At that time I inquired as to the first available date to have this matter scheduled before the Court was on the Court's calendar and the Clerk indicated the date of September 25, 2008 in the afternoon. Later, I checked the docket sheet and saw that a hearing was set. I again called the court desk and I was again told that Judge Anderson has ordered this hearing set.

9. The *Findings of Fact* and *Conclusions of Law* and the *Decree of Divorce* signed by the Court are identical to those prepared and mailed to my office by Clark

Allred on August 7 2008, Attorney for the Petitioner. I have compared the two documents which appear to be a word for word verbatim copy or the original proposed findings from the Petitioner's Attorney's office. The only change is the deletion of the mailing certificate page on the findings of fact on the copy that I received. The final findings include footnotes which were discussed by counsel at the divorce trial as a means to make legal argument. The cover letter from Attorney Allred describes the findings and decree as "proposed" .

10. I did not receive actual notice of the findings which were entered by the Court in August of 2008 until September 8, 2008 by a fax received from my client's secretary after she went to the Clerk's office and purchased a copy from the Clerk of the *Findings* at my request to check the status of this matter. While I have received actual notice as of September 8, 2008, I have never been served with a signed copy by the clerk or any attorney.

11. As Attorney for the Respondent, my assumption was that the Court would collaboratively use the proposed findings from either party, as well as make its own proposed findings and ruling on evidence and the various issues, then issue a *Ruling* or *Memorandum Decision*. In that regard, I submitted a cover letter with a disk with my proposed findings to assist the Court in drafting its own findings, a procedure used in other cases within the State of Utah.

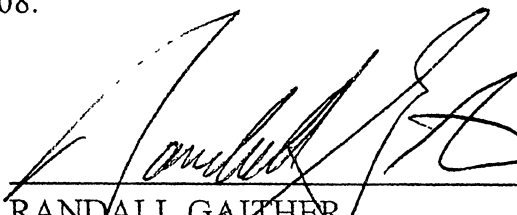
12. If I had known that the Court was using a procedure in which the Court

would choose between two sets of competing proposed Findings of Fact and then to enter one or the other in its totality, then I would have framed the Respondent's proposed findings in a different fashion. Further, I would have requested oral argument in order to respond and object to any final findings in light of the evidence.

13. In light of my practice and litigation of divorce matters, I have been surprised by the procedures and lack of notice of the trial court and request that relief be granted on relevant Motions filed with this Affidavit.

14. This Affidavit is being submitted to set forth to supplement the record concerning procedures and notice in the above entitled proceedings. The docket sheet does not reflect that the proposed findings submitted by the Respondent's Attorney have been made part of the record. Attached hereto is as Exhibit One is the cover letter and documents received from the Petitioner's Attorney. Attached hereto as Exhibit Two is the cover letter and documents submitted by the Respondent's Attorney.

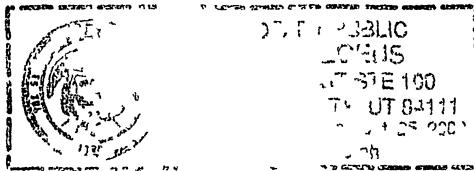
DATED this 17 day of September, 2008.

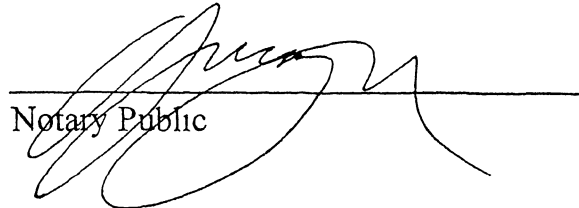


RANDALL GAITHER
Attorney for the Respondent

State of Utah)
 :SS
County of Salt Lake)

On the 11th day of September, 2008 , personally appeared before me Randall Gaither who having read the foregoing Affidavit, swears that the contents thereof are true according to the best of his information and belief and has executed the same




Notary Public

Notary Seal:

DELIVERY CERTIFICATE

I hereby certify that a true and correct copy of the foregoing AFFIDAVIT OF RANDALL T. GAITHER was delivered to:

CLARK B. ALLRED
ALLRED & MCCLELLAN, P.C.
72 NORTH 300 EAST
ROOSEVELT, UTAH 84066
FAX: (435) 722-3928

DATED this 12 day of September, 2008.

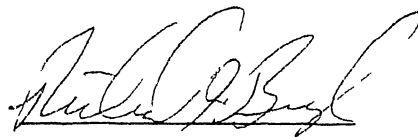


EXHIBIT ONE

of Affidavit of
Randall Gaither

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000467

Allred & McClellan, P.C.

Law Offices

148 South Vernal Avenue Suite 101
Vernal, Utah 84078
Phone (435) 789-7800
Fax (435) 789-7820
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Clark B Allred
Clark A McClellan
Brad D. Brotherson

72 North 300 East (123-14)
Roosevelt, Utah 84066
Phone (435) 722-3928
Fax (435) 722-3920
E-mail clarka@ubtanet.com

August 7, 2008

The Honorable Judge Anderson
Eighth District Court
255 South State
Roosevelt, UT 84066

COPY

RE: Brough v. Brough
Civil No. 054000084 DA

Dear Judge Anderson:

Pursuant to the Court's request, the Petitioner has prepared and is herewith submitting her proposed Findings of Fact and Conclusions of Law and Decree of Divorce, on the above referenced matter.

Very truly yours,

ALLRED & McCLELLAN, P.C.

By: Clark B Allred

CBA/cb
enclosures
pc: K. Brough
R. Gaither

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8/11/08

CLARK B ALLRED - 0055
CLARK A. McCLELLAN - 6113
ALLRED & McCLELLAN, P.C.
Attorneys for Petitioner
72 North 300 East (123-14)
Roosevelt, Utah 84066
Telephone: (435) 722-3928

IN THE EIGHTH JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY

ROOSEVELT DEPARTMENT, STATE OF UTAH

KATHRYN C. BROUGH,)	
	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
Petitioner,)	
)	
vs.)	
)	
RICHARD JAMES BROUGH,	)	Civil No. 054000084
)	
Respondent.	)	Judge John R. Anderson

The above case came before the Court for trial on the 9th day of July, 2008. Petitioner was present with her attorney, Clark B Allred. Respondent was present with his attorney, Randall Gaither. Evidence was received by the Court in the form of testimony and exhibits. Argument was received by counsel and the Court took the matter under advisement.

The Court having reviewed the evidence and after being fully advised, makes these findings of fact and conclusions of law.

FINDINGS OF FACT

1. Petitioner was a resident of Duchesne County, State of Utah, and had been for more than three months immediately prior to the commencement of this action.

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2. The Petitioner worked for the Respondent from 1993 to 1995. She then worked for her husband, Mr. Baum, until they separated. In the summer of 1997, she again started working for the Respondent at NJ Trucking.

3. On December 1, 1997, the parties started living together and they married on July 14, 1998.

4. At the time the parties married, the Respondent had two minor children from a previous marriage. One of the reasons the parties married was to assist the Respondent in obtaining custody of those two minor children.

5. The Respondent also had two older children who were of majority age. Those children insisted that the Petitioner sign an agreement not to claim any assets the Respondent then owned if the parties divorced in the future. The Respondent stated that he thought the request was dumb. The Petitioner, to appease the two children, called an attorney, but, when informed of the cost of preparing a prenuptial agreement, elected to write out a one paragraph statement which she and the Respondent signed which is Respondent's exhibit 1. There was no discussion or disclosure of what each party owned. The testimony of the Petitioner, which was not rebutted, was that the statement was only to apply to assets owned on the date of marriage and not to further acquired assets or improvements to those assets.

6. At the time of the marriage, the Respondent owned a business called the Glass Shop that no longer exists, family property in Randlett (to which the Petitioner has made no claim), a home in Duchesne that had a large mortgage against it, and a business called NJ Trucking. He was also purchasing acreage in Bandana Ranches.

7. At the time of the marriage, NJ Trucking had some vehicles, trailers, and equipment. NJ Trucking had been valued at \$44,000 a few years earlier in the Respondent's prior divorce. The cost to acquire the equipment that remains from NJ Trucking, based on Exhibit 27, was \$93,124.00. Its present depreciated value is \$3,151.00. The 1999 financial records and tax return shows that NJ Trucking had gross income of \$188,785.00.

8. After the parties' marriage, the parties changed and expanded the NJ Trucking business. They bought a crane for \$135,000 and other heavy equipment and changed the name to Brough Trucking and Crane Service Inc. Respondent remained the sole shareholder. In 2004, the year before the parties separated, the gross income had increased to \$785,250.00. Both parties worked in the business. They seldom took salaries and paid most of the family and personal expenses from Brough Trucking. The parties personally and jointly took out a \$160,000.00 loan that was used to pay off the debt on the crane and other equipment. The marital home was used as collateral for the loan. The net value of

Brough Trucking at the time of the trial is \$492,000.00. See Exhibit 3 Townsend appraisal.

9. When the parties started living together and at the beginning of the marriage, they lived in a home in Duchesne that was owned by the Respondent. That home was subject to a substantial mortgage on which \$1,300.00 per month payments were made during the marriage. Those payments were made from earnings from Brough Trucking.

10. The Petitioner, with her own labor and the assistance of her son, remodeled the Duchesne house, including making a room out of the patio, adding walls and windows, taking out a sliding glass door to open up an area, painting, installing sheet rock, carpet and siding, and replacing the old shower with a new bathtub. She also remodeled the downstairs and added a wall, sheet rock, painted and added carpet downstairs, put in light fixtures, and did yard work.

11. Shortly after the parties married in September of 1998, the Respondent's son, Bryan, age 14, came to live with the parties. He wanted to go to school in Roosevelt. Just prior to the parties starting to live together, the Respondent had purchased a shop in Roosevelt from Drillers Inc. to use for Brough Trucking. That shop was dirty and needed repairs. The parties decided to construct living quarters in the Roosevelt shop so that they could move to Roosevelt.

12. The Petitioner, primarily by herself, but with assistance of her children and the Respondent's children, built a bedroom, bathroom

and living area upstairs in the Roosevelt shop including sheet rock, tile work and carpet. Downstairs, she put in 2 bedrooms, a kitchen, cleaned the shop and added floor tiles to the shop. Carpets were added to all living areas and an office was constructed downstairs.

13. In August of 1999, the Respondent's youngest daughter, Amanda, age 12, came to live with the parties. The parties and the children moved from Duchesne and started living in the Roosevelt shop.

14. The parties then started looking for a more suitable home or property on which to construct a home. The Petitioner looked at many properties but did not find anything acceptable to both parties. In the summer of 2000, the parties were talking to a Clare Duncan who said he had some acreage for sale. The parties went and looked at the property, approximately 18 acres near Neola, Utah, and made an offer of \$50,000.00. That offer was accepted and the transaction closed on August 3, 2000. The parties paid \$20,000 down and jointly signed a note for the balance of \$30,000.00. The property was deeded jointly to the parties. The \$20,000.00 down payment was paid from Brough Trucking just as all other bills were paid from Brough Trucking.

15. The parties then took plans and hired a general contractor. Construction on the home started in early 2001. The Petitioner was responsible for coordinating the work. She went to the construction site on a daily basis. In addition to coordinating with the contractors, she picked up materials and also worked on the home. The

home is a log home, and the Petitioner was the person that chinked (put putty) between the logs.

16. The Respondent then fired the general contractor so the Petitioner took over the completion of the home. Additionally, in the summer of 2001, the Respondent broke his leg and was unable to help on the home or to work at Brough Trucking. The Petitioner did the insulating of the home, completed the sheet rock, built a fruit room, constructed a gun room for the Respondent, and painted, wallpapered and carpeted the home. The parties and the Respondent's two children moved into the home at Thanksgiving of 2001. The following summer (2002), the Petitioner did the landscaping, including putting in the yard, trees and an orchard, sprinkling system, fire pit and painting the fences. Later, she constructed a deck and swimming pool.

17. The monies for constructing the home were paid primarily from Brough Trucking and some payments were made from the Respondent's personal checking account and some from the Petitioner's personal checking account.

18. The present value of the home is \$325,000.00 which is less than the parties paid to construct the home. It is jointly owned by the parties.

19. During the marriage, the Respondent worked at Brough Trucking (except for the year summer of 2001 to the summer of 2002 when his leg was broken). The Petitioner was involved in the remodeling and building

of the living quarters, the maintaining of the home and family and also worked at Brough Trucking. The parties seldom took salaries from the business. W2 records show the Petitioner was only paid \$3,360 in 1999, \$10,640.00 in 2000, \$8,880 in 2001, \$7,680.00 in 2002 and \$6,876.00 in 2003. Both parties maintained separate checking accounts. The Petitioner deposited her checks in her account and then used those monies on the home, the family, and expenses for both her children and the Respondent's children. Respondent deposited his monies in his account and used those to pay child support and legal fees in the early part of the marriage and for personal and family expenses during the marriage. Since the parties took minimal salaries, almost all living expenses, food, utilities, transportation, housing (including the remodeling of the shop and Duchesne house, mortgage payments and building of the home) were paid with checks or credit cards from Brough Trucking.

20. The Respondent claimed that he should have credit against the value of the home for premarital assets that were sold. However, the evidence did not support that claim. He was unable to trace those assets and monies. The evidence showed that monies from the sale of assets were used for purposes other than the home including paying operating expenses of Brough Trucking when the Respondent had a broken leg.

21. Respondent claimed that the money from the sale of the Bandana Ranch was used for the down payment of the 18 acres in Neola where the

home was built. First, that property was paid for during the marriage. Secondly, the 18 acres in Neola closed on August 3, 2000. The Bandana Ranch was not sold until August 24, 2000 and the account the \$18,512 went into was used to pay many different living and personal expenses.

22. Respondent claimed the money from the sale of the Duchesne shop should be a credit. He sold that shop on May 3, 1999. The down payment of \$28,983 was two years before the home was constructed and the monies went into the general account at NJ Trucking and was spent for expenses of NJ Trucking. The balance of the purchase price was apparently received in 2000 (a year before the home was constructed) and also went into the Brough Trucking general account and was used for Brough Trucking expenses.

23. Respondent also claims a credit of \$30,000 for a rig he sold in June 2000 and other equipment he sold in 2000. Again, those sales occurred well before the construction of the home, those monies went into the general account at Brough Trucking and they were spent before the land was bought or the home was constructed.

24. Respondent also makes a claim for the \$24,702.00 received from the sale of the Duchesne home in April 2002. That home had been substantially improved and remodeled by the Petitioner and marital monies were used to pay mortgage and taxes on the property. There was no showing where that money was deposited and no showing it was used on the Neola Home.

25. On October 9, 2002, the parties borrowed and jointly signed a promissory note for \$160,000.00. The home was used as collateral. The money was used to pay off the loan on the crane and other equipment. Respondent testified that, because of his broken leg and his inability to work for a year, the money was needed to keep Brough Trucking operating. The money apparently was used to pay off the debt on the crane and some other vehicles to reduce the monthly obligations of Brough Trucking.

26. After completing the home, the parties decided to further expand Brough Trucking. In March 2004, they purchased 80 acres in Ballard to be used for a gravel pit and fill dirt. The 80 acres was titled in Brough Trucking. Petitioner remodeled an old trailer house which was moved to the property to be used as a scale house and office. That remodeling included framing, insulation, sheet rock, and wiring. The purchase price for the 80 acres was paid by Brough Trucking.

27. In May 2004, the parties jointly acquired 4 acres with utilities adjacent to the 80 acres. The 4 acres were titled in the names of the parties as joint tenants. The purchase price was paid by Brough Trucking. The parties then deeded that property to Brough Trucking.

28. The Petitioner was the primary person involved in raising the Respondent's two children. She helped and encouraged them in school,

did the cooking, cleaning and laundry. She also paid some of their expenses from her bank account.

29. Shortly after Amanda turned 18, she and the Petitioner had an argument. The Respondent then told the Petitioner to vacate the home. The Petitioner vacated the home on August 1, 2005, taking very few personal items with her. She came back the next day and loaded some items into a horse trailer. The Respondent, however, took back the horse trailer with most of the items.

30. The personal property is all used property and has minimal value. The values listed by the Respondent are either new values or exaggerated.

31. After the parties separated, the Petitioner obtained employment as a laborer with Stanco Insulation. She presently resides with her mother. She has purchased a used trailer she is setting up next to her mother. Her present net monthly income is \$1,656.00 and her expenses are \$1,695.00 per month.

32. The Respondent has continued to reside in the home and operate Brough Trucking and continues to pay his personal expenses thru Brough Trucking.

33. Petitioner has incurred legal fees and costs in this matter. The affidavit of the Petitioner's attorney shows that she had incurred \$15,391.53 in fees thru July 2, 2008. He testified that he had incurred an additional 10 hours in preparation prior to trial at \$175.00 per

hour. In addition, there was the time of trial and the post-trial work. The affidavit sets forth in detail the work that was provided and the hourly rates charged. In addition, the Petitioner paid \$400.00 for the appraisal of the home.

34. The Petitioner has made some payments on her legal fees but, based on her income and expenses, she has not been able to pay those fees and she does not have the means to pay the additional fees incurred in preparation for the trial and the trial.

35. Respondent did not request reimbursement of legal fees in his pleadings. At trial, he requested that he be reimbursed for the costs incurred in providing information to the appraiser of Brough Trucking. There is also approximately \$7,000.00 still owing for that appraisal. The appraisal of Brough Trucking was based on an order of the Court. Respondent was ordered to pay that expense with the Court reserving the right to reallocate that expense. The appraisal was needed and helpful to the Court in valuing the assets and deciding the division of the assets.

CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the Court concludes:

1. The one paragraph prenuptial agreement was not negotiated by the parties. There was no disclosure of assets in the prenuptial agreement and it was prepared mainly to appease the older children. It was intended to be limited to what the Respondent owned at the time of

the marriage as listed on that document. Items listed included the Glass Shop, the family properties in Randlett, and the assets in NJ Trucking at the time of the marriage. At the time of the marriage, the Respondent had also purchased the Roosevelt shop, and had the Duchesne shop and the Duchesne home. Those properties were not listed on the agreement, were not disclosed and became marital properties because of the marital funds used to pay for and enhance those assets and the enhancements and improvements made by the Petitioner.¹ The facts that the Petitioner improved the other assets, signed jointly on a \$160,000.00 loan and worked in the business also support the position that the agreement was limited to assets and debts existing at the time of the marriage.

2. The Glass Shop no longer exists and there was no evidence that any of its value remains. The Petitioner made no claim to the Randlett properties. There was little evidence as to the value of NJ Trucking at the time of the marriage. The best evidence was the \$44,000.00 value at the Respondent's prior divorce.

3. The monies from the sale of the Duchesne shop were deposited in the general bank account of Brough Trucking and used for general expenses of Brough Trucking. Those monies were received prior to the construction of the home and were not used in the home. Since there is

¹ Reese v. Reese, 1999 UT 75, ¶¶24-25; and Pierce v. Pierce, 2000 UT 7 ¶¶20, 27.

no showing or tracing of those monies to the home, there should be no credit given against the value of the marital assets.

4. The parties changed the nature of NJ Trucking and changed its name to Brough Trucking. Petitioner was actively involved in Brough Trucking and in the parties' successful efforts to increase its business and its value. She was also actively involved in enhancing the assets of Brough Trucking. She remodeled the Roosevelt shop and increased its value. She also built the scale house for the 80 acres. She cosigned on the \$160,000.00 note to pay for the crane and other vehicles. The monies to buy the crane, vehicles and land for Brough Trucking all came from earnings during the marriage. The parties did not treat Brough Trucking as a separate entity but paid all marital bills and living expenses from Brough Trucking. The business and personal expenses were commingled to make it impossible to determine what was personal and what was business. Even though Brough Trucking's stock was in the Respondent's name, it is a marital asset less the \$44,000.00 value at the time of the marriage.

5. The Roosevelt shop, though titled in the Respondent's name is used in and is part of Brough Trucking. The valuation of Brough Trucking by Mr. Townsend included the value of the shop. As noted above, the Petitioner greatly enhanced the value of that shop by cleaning it and building living quarters on the shop. The shop should be included in Brough Trucking and is a marital asset.

6. The Duchesne house was subject to a mortgage when the parties married which mortgage was paid from earnings during the marriage. The home was also remodeled and improved by the Petitioner during the marriage. The monies from the sale of the house were deposited in a general account which was spent for general living and business expenses. There was no tracing or showing that the monies from the sale of the Duchesne house went into the Neola house. In addition, those monies became marital assets because of the use of earnings during the marriage to pay the mortgage and taxes and the remodeling by the Petitioner.

7. The Bandana Ranch property was being purchased during the marriage with earnings from the marriage. The money from the sale of that property did not go to the down payment on the Neola property, as claimed by the Respondent, but was spent on general expenses. There should be no credit against marital assets given for those monies.

8. The Respondent also claimed credit for a rig and other property he asserted that he sold and used the proceeds to pay on the Neola house. The Respondent originally denied having any documents to support his claim of premarital assets. Shortly before trial, he provided some documents and tried to introduce additional documents at trial which the Court refused to receive because they had not been timely disclosed. There was evidence of \$30,000.00 from a rig. There was no evidence showing that those monies went into the home, but rather those

funds went into the Brough Trucking account and were spent on Brough Trucking expenses.²

9. The Neola home was purchased jointly by the parties and remains titled in both parties' names. The Petitioner was the primary person involved in the construction of that home, including doing much of the construction herself. The monies for the construction of the home came from earnings in Brough Trucking, from Petitioner's account where she deposited her salary and from the Respondent's account where he deposited his salary. It is a marital asset.

10. The Petitioner was actively involved in the expansion of Brough Trucking, she remodeled two living quarters and built the Neola home, she raised the Respondent's two children thru their teenage years and she was the person doing the cleaning and meals. The Respondent's position, that all property was premarital and that Petitioner should get no interest in it, would leave the Petitioner, at age 55, with nothing. The small wage she was paid results in less social security when she reaches retirement age than if she had been working for full wages. Fairness and equity require that she receive one half of the value of the Neola home and Brough Trucking (less \$44,000.00).³ Brough

²Dunn v. Dunn 802 P.2d 1314 (Ut.App. 1990) pre marital assets that have been consumed, commingled etc loss their separate status.

³Hogue v. Hogue, 831 P.2d 120, 121 (Utah Ct. App. 1992); Burke v. Burke, 733 P.2d 133, 135 (Utah 1987). See also Haumont v. Haumont, 793

Trucking has a value of \$492,000.00 less \$44,000.00 and the house has a value of \$325,000.00. Therefore, the Respondent, if he wants to retain ownership of the home and Brough Trucking, should be ordered to pay to the Petitioner the sum of \$386,500.00. In the alternative, the Petitioner should be awarded the Neola home and property with a value of \$325,000.00 and the Respondent awarded Brough Trucking and the Respondent ordered to pay Petitioner the difference of \$61,500.00 and to refinance the \$160,000.00 debt to remove the home and Petitioner from liability on that loan.

11. The Petitioner should also be awarded the vehicle she drives, subject to the remaining debt on it as of the date the decree is signed and the personal property in her possession and the property listed on Exhibit 24. Respondent should be awarded the remaining personal property, the horse trailer and the vehicle he drives.

12. Petitioner waived her claim to alimony as her income presently meets her expenses. However, her income is not sufficient to pay her legal fees and costs. The financial declaration received by the Court seems to be accurate and the expenses listed thereon are reasonable.

P.2d 421 (Utah Ct. App. 1990); Barber v. Barber, 792 P.2d 134, 136 (Utah Ct. App. 1990); Oliekan v. Oliekan, 2006 UT App 405, ¶20; Dunn v. Dunn, 802 P.2d 1314, 1321 (Ut. Ct. App. 1990) (using marital funds to make installment payments on separate property changes it to marital property); and Mortensen v. Mortensen, 760 P.2d 304 (Utah 1988) (listing many factors the court considers).

The Respondent has had the benefit of Brough Trucking to pay his expenses and legal fees and he has resided in the home. The Respondent should be ordered to reimburse the Petitioner for the legal fees she has incurred. The amount of legal fees as set forth on the Affidavit submitted by Petitioner's attorney were necessary and the fees charged are reasonable.⁴ In addition, the Petitioner incurred 10 more hours in preparation and the time incurred for trial and post-trial work. An additional affidavit should be submitted as to the additional time incurred.

13. The cost for the appraisal of Brough Trucking was needed for the valuation of the business. The Respondent should be required to pay the balance owing on that bill. There is no basis to award the Respondent for expenses incurred by his secretary to provide information to the appraiser. The Respondent, having the full control of Brough Trucking, has the much greater ability to pay the expenses including appraisal costs and legal fees in this case.

DATED this ____ day of August, 2008.

BY THE COURT

John R. Anderson
District Court Judge

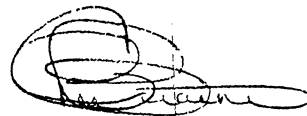
⁴Rudman v. Rudman, 812 P.2d 73, 77 (Utah Ct. App. 1991). 000-440

MAILING CERTIFICATE

I, Cheree Brotherson, am employed by the office of ALLRED & McCLELLAN, P. C. attorneys for Petitioner herein and hereby certify that I served the attached FINDINGS OF FACT AND CONCLUSIONS OF LAW on Respondent by placing a true and correct copy thereon in an envelope addressed to:

RANDALL GAITHER
ATTORNEY AT LAW
159 WEST 300 SOUTH BROADWAY #105
SALT LAKE CITY, UT 84101

and deposited the same, sealed, with first class postage prepaid thereon, in the United States mail at Roosevelt, Utah, on the 7th day of August, 2008.



CHEREE BROTHERSON

CLARK B ALLRED - 0055
CLARK A. McCLELLAN - 6113
ALLRED & McCLELLAN, P.C.
Attorneys for Petitioner
72 North 300 East (123-14)
Roosevelt, Utah 84066
Telephone: (435) 722-3928

IN THE EIGHTH JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY
STATE OF UTAH, ROOSEVELT DEPARTMENT

KATHRYN C. BROUGH,)	
	)	DECREE OF DIVORCE
)	
Petitioner,)	
)	
vs.)	
)	
RICHARD JAMES BROUGH,	)	Civil No. 0540000084
)	
Respondent.	)	Judge John R. Anderson

The above case came before the Court for trial on July 9, 2008. The Court has entered an order divorcing the parties and took the remaining issues under advisement. The Court has now entered its Findings of Fact and Conclusions of Law and based thereon,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Respondent, if he wants to retain ownership of the home and Brough Trucking and Crane Service Inc. (Brough Trucking), is ordered to pay to the Petitioner the sum of \$386,500.00 within 90 days of the entry of this decree. He is to notify Petitioner's

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to RB

counsel within 15 days of entry of the decree if he elects to retain both assets.

2. If the Respondent does not elect to retain ownership of the home and Brough Trucking as provided above, then the Petitioner is awarded the Neola home and property, the Respondent is awarded Brough Trucking and the Respondent is ordered to pay Petitioner \$61,500.00 for the difference in the value within 90 days of entry of the decree.

3. Respondent is ordered to refinance the \$160,000 debt to remove the home and Petitioner from liability on that loan.

4. The Petitioner is awarded the vehicle she drives (subject to the remaining debt on it as of the date this decree is signed), the personal property in her possession and the property listed on Exhibit 24.

5. Respondent is awarded the remaining personal property, the horse trailer and the vehicle he drives.

6. Neither party is awarded alimony.

7. Respondent is ordered to pay to Petitioner the amount she has incurred in legal fees and costs in this matter. The \$15,391.53 set forth on the affidavit submitted as Exhibit 4, 10 hours at \$175.00 per hour for preparation and 9 hours at \$175.00

per hour for trial are awarded and ordered to be paid. In addition, the Petitioner's counsel shall submit a supplemental affidavit for the time spent on post-trial matters. If Respondent objects to the reasonableness of that amount, he shall file a motion with the Court setting forth those objections and the Court will set for hearing those objections.

8. Respondent is ordered to pay the costs of the appraisal performed by Brad Townsend.

9. Each party is ordered to execute and deliver, without delay, any titles or other documents which are presented to either one by the other and which are necessary to effectuate the transfer of property as has been hereinbefore set forth.

DATED this ____ day of August, 2008.

BY THE COURT:

John R. Anderson
District Court Judge

MAILING CERTIFICATE

I, Cheree Brotherson, am employed by the office of ALLRED & McCLELLAN, P. C. attorneys for Petitioner herein and hereby certify that I served the attached DECREE OF DIVORCE on Respondent by placing a true and correct copy thereon in an envelope addressed to:

RANDALL GAITHER
ATTORNEY AT LAW
159 WEST 300 SOUTH BROADWAY #105
SALT LAKE CITY, UT 84101

and deposited the same, sealed, with first class postage prepaid thereon, in the United States mail at Roosevelt, Utah, on the 7th day of August, 2008.


CHERE E BROTHERRSON

EXHIBIT TWO
of Affidavit of
Randall Gaitner

000103

000443

RANDALL GAITHER
ATTORNEY AND COUNSELOR AT LAW
159 West 300 South
The Broadway Lofts, #105
SALT LAKE CITY, UTAH 84101
TELEPHONE: (801) 531-1990
FACSIMILE: (801) 672-1162
Email: lostcanyon@msn.com

August 8, 2008

Duchesne County - Roosevelt ✓
Attn Judge Anderson
255 South State
P.O. Box 1286
Roosevelt, Utah 84066

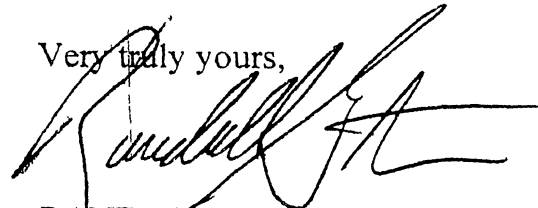
COPY

Re: ***Kathryn C. Brough v. Richard James Brough***
(Case No. 054000084)

Dear Judge Anderson,

Enclosed please find an original and courtesy copy of the Respondent's Post-trial Proposed Findings of Fact and Conclusions of Law & Memorandum. This document was faxed and mailed today to Attorney for the Petitioner, Clark Allred. Also enclosed is a disk with the Findings of Fact in Wordperfect and Word format if the Court would like to use a portion of the document in preparation of any final Orders. Thank you for your time.

Very truly yours,



RANDALL GAITHER
Attorney at Law

RG/ac
cc C Allred ✓
J Brough ✓

000104

000104 **FAXED**
8/8/08

RANDALL GAITHER #1141
Attorney for the Respondent
159 West 300 South Broadway #105
Salt Lake City, Utah 84101
Telephone: (801) 531-1990

IN THE EIGHT DISTRICT COURT IN AND FOR DUCHESNE COUNTY✓
ROOSEVELT DEPARTMENT, STATE OF UTAH

KATHRYN C. BROUGH,

Petitioner,

vs.

RICHARD JAMES BROUGH,

Respondent.

RESPONDENT'S POST-TRIAL
PROPOSED FINDINGS OF FACT
CONCLUSION OF LAW &
MEMORANDUM

Judge: JOHN R. ANDERSON

Case No. 054000084

PROPOSED FINDINGS OF FACT

1. The Petitioner and Respondent were married on July 14, 1998 and seven years later on August 30, 2005, the Petitioner filed for divorce in this pending action. The parties separated on August 1, 2005.

2. The Petitioner had been married and divorced four previous times before this marriage and had a child from a relationship with another individual prior to the first marriage. The Petitioner was 54 years old at time of trial and was 45 years old at the time

of marriage. The Petitioner's first marriage was when she was seventeen years of age. During her life she had three children, all of age, and no children with Respondent.¹

3. At the time of the marriage the Respondent was 50 years old. Mr. Brough has a high school education and after serving time in the Marines started working in the trucking industry. The Respondent started N.J. Trucking which was incorporated 17 years prior to this marriage in 1982 as a corporate business entity with the Respondent as sole shareholder.²

4. On July 9, 1998, the parties executed before a Notary Public a premarital agreement which had been typed by the Petitioner. The Petitioner contacted an attorney first and then in an effort to save costs typed the agreement. In that agreement, the Petitioner stated that she held no claim to any personal properties, assets or money of the Respondent, N. J. Trucking Inc. (now Brough Trucking & Crane Service, Inc), the Glass Store, or any personal or family properties of the Respondent (see Respondent's Exhibit

¹ At trial the Petitioner testified that the type of work she had performed was mostly physical labor, with some secretarial experience. At the time of the trial, she said she works as a laborer. She testified that she met Mr. Brough and her fourth husband in 1993 at bar. Some time after being hired on as a shop hand and laborer the Petitioner moved in with Mr. Brough in December 1, 1997 in his Duchesne residence. When she first met Mr. Brough, the Petitioner did not have a truck and only an interest pending in relation to divorce proceeding with her fourth husband. At trial, the Petitioner acknowledged her first job was to work on fixing up the living quarters inside the residence as an employee.

² Mr. Brough had been married two times prior to the marriage with the Respondent. He had four children with his first wife and he was divorced from Nancy Brough in 1993. Respondent's Exhibit 11, the corporate return for 2007 lists Richard J. Brough as the 100% owner of stock. Respondent's Exhibit 32 indicated that Brough Trucking and Crane Service, Inc. was in good standing with the State of Utah as of the date of trial.

5. The Respondent agreed in the premarital agreement that the Petitioner would not be responsible for debts occurring from the listed properties and agreed to assume all business debts.⁴ (See Respondent's Exhibit 1)

6 Prior to the marriage, the Petitioner was the bookkeeper and receptionist at N. J. Trucking, Inc. She was an hourly employee at N. J. Trucking in 1993 for two years until 1995. The Petitioner was aware of the type of business owned by the Respondent and that the Respondent was the sole shareholder.

7 The Petitioner did not introduce any evidence or facts at trial to show that the prenuptial agreement was signed on the basis of any claim of fraud or duress.

8. After the marriage, the Petitioner maintained separate financial accounts in her name only at Zions Bank and Mountain America Credit Union. She deposited the funds which she received from employment at Brough Trucking and Crane Service, Inc. into her separate accounts. The Petitioner also deposited the funds she received from a premarital settlement as her separate property which she used to pay of her premarital

³In relation to Respondent's Exhibit One, the Petitioner described business using "Inc." and she knew it was a corporation when she typed up the agreement. She was aware that Mr. Brough owned 100% of the shares and she was never issued any shares of the corporation.

⁴Concerning Respondent's Exhibit One, Kathy Brough stated at trial, "The fact is I don't want and didn't want anything Jim had prior..." In relation to Respondent's Exhibit One the Petitioner said during cross examination that she was aware the business using "Inc" and she knew it was a corporation when she typed up the agreement. She was aware that Mr Brough owned 100% of the shares and she was never issued any shares of the corporation.

debts. The Petitioner had separate four or five credit cards in her name. The Petitioner had \$3,000.00 in her separate accounts at the time of separation with the Respondent in 2005.

9. After the marriage, the Respondent, Richard James Brough, maintained separate, personal checking accounts in his name at Wells Fargo Bank and Mountain America Credit Union.

10. The Petitioner and Respondent resided together prior to signing the premarital agreement.

11. The Petitioner testified that she did not have a motor vehicle prior to the marriage. After, the Petitioner received a settlement from her fourth husband which she used the money to pay separate pre-marital debts for her credit cards.

12. The parties maintained separate accounts until separation and never commingled any funds which they received separately during the marriage in any joint-checking or joint-savings account.

13. The Petitioner never introduced any checks in evidence which proved any expenditures which she actually made to construct the residence in Neola, Utah that was jointly titled in both parties names.

14. The Petitioner spent money on temporary landscaping at a local nursery for the Neola residence which was not a cost to build and construct the residence.

15. The W-2s of the Petitioner which were received as Respondent's Exhibit Ten

state yearly income as a corporate employee of Brough Trucking and Crane Service Inc.
as follows:

YEAR	TOTAL WAGES, TIPS, OTHER COMP.
2000	\$10,640.00
2001	\$8,880.00
2002	\$7,680.00
2003	\$6,876.00
2004	\$10,588.50
2005 (year of separation)	\$4,765.60

16. The Petitioner kept track of her hours worked as an employee during the time she was employed by N.J. Trucking Inc. and/or Brough Trucking and Crane Service, Inc. In the last part of her employment, a time-card system was implemented to keep track of her hours as an employee. The Petitioner never received any check for dividends or the distribution of income. (See Respondent's Exhibit 18.)

17. Prior to the marriage, the Respondent, Mr. Brough, owned a single family residence at 19487 East River Road, Duchesne County, Utah which was sold after the marriage for approximately \$114,000.00.

18. The Respondent received a check of \$24,702.84 which was deposited in his account to construct the house in Neola, Utah. (Respondent's Exhibit 15c and 35)

19. In relation to the Duchesne property, the Respondent received a favorable tax interest and placed a first mortgage on his premarital residence which he owned 19487 East River Road in Duchesne County, Utah to finance business equipment and that note was paid when the residence was sold.

20. Prior to the marriage, Mr. Brough owned five acres near Fruitland, Utah referred to as the "Bandana Ranch", which he sold after the marriage and received \$18,521.51. (Respondent's Exhibit 35)

21. The funds from the sale of separate property were intended for and used to purchase the real property for the residence in Neola, Utah and received the same month as when the closing took place on the purchase of the property. (Respondent's Exhibit 31)

22. Prior to the marriage, the N.J. Trucking Inc. owned certain lien free business assets including oil derricks and rigs. Mr. Bough sold the assets which included oil field equipment and proceeds were directly used to pay for construction costs of the Neola residence. (Respondent's Exhibit 15c and 39)

23. The Respondent at all times is the sole owner of the business known as Brough Trucking and Crane Service, Inc. and at all relevant times he held 100% of stock in the corporation.

24. Prior in the 1990's, the Respondent had a residence and shop in Duchesne, Utah and made a business decision to move his residence and the shop to the Roosevelt area of Duchesne County, State of Utah.

25. Around the time the new shop in Roosevelt, Utah was opened, the Petitioner contacted the Respondent concerning employment. The Respondent indicated that the business had a secretary and bookkeeper. The Petitioner has hired to work in cleaning, constructing and helping to build and organize the shop, as well as other maintenance and cleaning projects at the business at an hourly rate of employment.

26. The Petitioner was compensated for her work on an hourly basis when she commenced maintenance work and construction work at the shop. She continued to keep her hours and receive income for the work in assisting to construct the residence and business which continued through the course of the business until the time she quit working for Brough Trucking and Crane Service, Inc. by writing the word "Quit" on her time-card on May 8, 2005. (Respondent's Exhibit 18)

27. The Petitioner, excluding the pickup truck, had \$3,829.00 more in joint personal property than acquired during the marriage to the Respondent. The Petitioner failed to adequately itemize the personal property.

28. On October 15, 2008, a loan from Zions bank in the amount of \$160,000.00 was obtained using the Neola Residence as collateral. The loan was used to pay business debts of Brough Trucking and Crane Service, Inc. and the corporation has paid all of the payments on the business loan.⁵

29. The \$160,000.00 loan was for a business purpose when Mr. Brough was laid

⁵ Respondent's Exhibit 9 is the amortization schedule of the loan.

up with a broken foot and the company was having difficulty operating. The Petitioner signed the loan because she was on the title to the property.

30. The Respondent should be ordered to assume that loan and refinance the loan within a reasonable time and to hold the Petitioner harmless from that loan on the Neola residence because the loan is a liability of the business.

31. At trial, the Respondent introduced exhibits which indicated that the computer contested in pretrial issues was purchased by a check from the business. (Respondent's Exhibit 22) The Petitioner to the judgment should pay the costs of copying the disk due to the fact that the Respondent claimed was not a business asset in the amount of \$322.50. (See Respondent's Exhibit 37)

32. For the Tax year 2007, Brough Trucking & Crane Service, Inc. had one full time employee, Doris Hyatt, a secretary.

33. For the year 2007, Mr. Brough's income from the business operation was \$61,370.00 and he personally paid the income taxes on 100 % of the business income based upon the Subchapter election filed by the business.

34. The Petitioner signed a corrective deed changing the title on the "Ballard" also referred to as the "Pine Tech" property to reflect the intent of the parties that the acquisition of that property was by Brough Trucking & Crane Service, Inc. (Respondent's Exhibit 13) The Ballard property is a joint venture with Byron Gibson and the trucking company. The business venture commenced when the business started acquiring property

in 2004. The 80 acres in Balla^d is not marital property and is¹ subject to the prenuptial agreement.

35. The Respondent, with the assistance of his daughters, assembled an accurate accounting of substantially all of the costs to build the Neola residence which was not contested by the Petitioner at trial. The source of funds was segregated as to each checking account in which either the business or Mr. Brough personal account deposited funds which were used to pay the construction of the residence.⁶ The Respondent also traced the source of funds into the checking accounts set forth in Exhibit 15 by deposit slips and other business records.⁷ (See Respondent's Exhibit 15)

36. The Petitioner contributed personal assistance, time and effort in building the Neola Residence but did not contribute funds. The Petitioner did not prove at trial any

⁶ Mr. Bough testified that Kathy Brough was never a signator on his personal checking account identified in the accounting of Respondent's Exhibit 15.

⁷ Exhibit 15c and Exhibit 39 were identified at trial as deposit slips and other memorandum corroborating the separate funds property deposited into the separate accounts. These deposits include:

- a. \$30,000.00 from the sale of the Duchesne Property from the buyers of \$30,000.00. (See also Respondent's Exhibit 31)
- b. A deposit on 05/01/2002 for sale of \$10,810.82 for Jim's House (in Petitioner's handwriting).
- c. A deposit of \$54,000.00 on 05/01/2000 that was deposited into the NJ trucking account.
- d. \$50,000.00 for the sale of used oil field equipment owned for 15 years.
- e. \$30,000.00 from Chotaw for a Derrick purchased from the business.
- f. \$5,000 Sale of used oil field equipment by cashier's check.
- g. A deposit of \$3,000 for oilfield equipment sold.
- h. A cashier's check in the amount of \$30,000 to Brough Trucking on 05/17/2001

monetary amounts contributed to the construction of the residence of any separate funds.

37. As set forth in Respondent's Exhibit 15(a), (b) and (c) the costs paid by the business of Mr. Brough from a personal fund to construct Neola residence are as follows:

I. Brough Trucking & Crane Service Inc. (Checking account)	\$166,373.89
ii. N. J. Trucking (checking account)	\$86,559.12
iii. Jim Brough, (personal checking account)	<u>\$73,318.10</u>
TOTAL	\$326,251.11

38. The premarital and separate property of the Respondent was used to construct the Neola residence and the total costs and expenses contributed by the Respondent from his premarital or separate funds exceeds the present market value of the Neola residence.

39. The Petitioner is not entitled to alimony and she admitted during her deposition that she resided with Ned Ross prior to this trial and she was self sufficient and could pay her expenses.

40. After the marriage, the Petitioner continued to receive an income from Brough Trucking and Crane Service Inc. which she deposited in her separate accounts at Zions Bank and Mountain America Credit Union.

41. The Petitioner testified at trial that she was financially able to make at least \$7,000.00 in payments prior to the time of trial to her attorney. In addition, after the time of separation, the Petitioner was not paying rent since March 2007 and she was buying a double wide trailer for \$10,000.00 to place free of charge on her Mother's property.

42. The Petitioner's attorney was accepting monthly payments on the continuing

Obligation for attorney's fees and the Petitioner is able to continue to pay for her obligation for attorney's fees from her present income.

43. The Respondent incurred \$3,798.75 to Randall Gaither, Attorney at Law, for reasonable attorney's fees and costs necessary to provide documents, other information and to coordinate with the two appraisers concerning the business appraisals retained by the Petitioner by Court order. (Respondent's Exhibit 28)

44. The Respondent's business incurred \$8,672.08 in expenses as set forth in Respondent's Exhibit 8 which sets forth the expenses of Amanda Hansen and/or Kristy B. Clayburn, employees of Brough Trucking and Crane Service Inc. in assembling material and assisting in Court ordered appraisals of the business equipment. This is an unnecessary cost which is a factor in requiring the Petitioner to assume and pay her own attorney's fees and costs.

45. The expert witness, Brad Townsend, was selected by the Petitioner and her attorney to act as her expert during trial. The appraiser in his report stated that he was unable to determine a value for N.J. Trucking, Inc. at the time of the marriage. (Respondent's Exhibit 40) Brad Townsend's total bill was \$12,707.00 and he testified that he had been paid by Mr. Bough for a retainer on October 26, 2007 for \$2,500.00 and received a check on August 24, 2007 in the amount of \$2,918.05. In June 2008 Mr. Bough paid \$1,500.00 for the appraisal by equipment appraiser, Ron Liese.⁸

⁸ On August 6, 2008, counsel for the Respondent received an invoice for \$7,563.46 from Norman, Townsend & Johnson, LLC.

46. The appraiser, Brad Townsend, did not find that there was any good will over the basic value of the equipment after receiving extensive accounting information and financial information supplied to him by the Respondent.⁹

47. The expert, Brad Townsend, testified that there was no enhanced value of the income stream of the business in excess of the amount to pay for the services of the owner/proprietor in providing services in the business.

48. The basis for valuation was the value of the sale of the equipment which was an enhanced book value based upon an equipment appraisal by Ron Liese. Mr. Liese was retained only after the appraisal by Brad Townsend which used traditional techniques for economic valuation of a small business and indicated that there was no value in the business except the value in the used equipment and assets.

49. Irregardless of the prenuptial agreement, the value of the business does not exceed the value of the services of Mr. Brough and would not be subject to any

⁹ Brad Townsend testified that Mr. Brough made all payments even though retained by Kathy Brough. Information came through Respondent's information. He indicated that the returns on investment by net income had lower value than value of tangible assets which sit idle. He indicated that in May 2008 he reached a determination after reviewing the books that there was no good will in business over tangible value of the assets. He indicated that income stream fair return for value of owner for fair salary for his work effort no additional return on assets base. Brad Townsend's opinion of a fair salary for Mr. Brough including quantify generated income, adjusted for the payment of directly out of business for personal expenditures:

2003	\$15,000
2004	\$57,000
2005	\$40,000
2006	\$ 25,000
2007	\$53,000

distribution in these proceedings.¹⁰

50. At the trial, the Petitioner did not object to the specific accounting set forth in Respondent's Exhibit 15 which demonstrated that the costs of building the Neola residence came from either the premarital business assets of the Respondent or from the Respondent's separate property in his personal checking account.

51. Based upon the appraisals received concerning the real property, the Court finds that the Neola Residence was valued at the time of separation and at the time of trial at approximately \$320,000.00 which was less than costs contributed to build and construct the residence by Mr. Brough.

52. The Petitioner never accounted for the value of any joint personal property and only testified as to the lists prepared by the Respondent. Based upon the evidence at trial and the fact that the Petitioner was allowed by the Respondent to use a horse trailer to make several trips to remove personal property when she separated, each party should be found to have in their possession at the time of trial an equal amount of joint marital property.

53. As to attorney's fees, the Petitioner incurred a substantial amount of attorney's fees in relation to her claims asserted at trial concerning her claim to the business and the Respondent prevailed on the issue of a valid prenuptial agreement.

¹⁰ There can be no good will in a business that is dependent for its existence upon the individual who conducts the enterprise and would vanish were the individual to die, retire or quit work." *Stevens vs. Stevens*, 754 P.2d at 956 (citing *Jackson v. Caldwell*, 18 Utah 2d 81, 415 P.2d 667, 670 (1966)).

54. The Petitioner testified that at the time of trial she was residing with her mother rent free and had the ability to save sufficient funds to purchase a new residence for herself and the sum of \$7,000.00 would have been sufficient but for the business claim in these divorce proceedings.

55. The Petitioner was employed and her monthly income at the time of trial exceeded her expenses.

PROPOSED CONCLUSIONS OF LAW

1. In considering the equitable factors traditionally used by the courts in distributing property in a divorce proceedings, the Court has taken into account the relevant facts that both parties were married and divorced multiple times prior to this marriage, both parties had children from prior marriages, the advanced age of the parties at the time of marriage, and the position of each party prior to the marriage. In light of the marriage of six years prior to separation, where no children were born and in which the couple was married later in life, the court should attempt to restore the parties to their premarital status.

2. The notarized prenuptial agreement dated July 9, 1998 is a valid and enforceable contract.

3. Under the prenuptial agreement, the ownership interest of Richard James Brough of N.J. Trucking Inc. which was changed by name only to Brough Trucking and

Crane Service, Inc. during the marriage is not subject to distribution during these divorce proceedings to the Petitioner based upon terms of the prenuptial agreement.

4. Further, even if the business interest was subject to distribution, the Petitioner failed to show by adequate evidence that there was any good will or enhanced value to the business after the marriage over and above the value of the services of Mr. Brough.

5. The income, profits, and the liability including the loan to Zions Bank secured by the Neola residence, of the business are excluded from distribution to the Petitioner by the prenuptial agreement. The Respondent should be ordered to refinance the loan on the Neola residence within a reasonable period of time and the Petitioner should be held harmless therefrom.

6. The property in Ballard, Utah is a business asset owned by Brough Trucking and Crane Service, Inc. as was demonstrated when a Corrected Deed was voluntarily signed and acknowledged by the Petitioner placing the property in the name of the business entity. Therefore, the property is within the scope of the premarital agreement.

7. During the course of the marriage the parties acquired certain personal effects such as recreational vehicles, television sets and furniture which were intended to be joint-marital purchases by the parties and the jointly purchased property are not included within the terms of the prenuptial agreement.

8. The property in Neola, Utah was placed in joint names and therefore the Petitioner has a legal interest by virtue of in the Deed which was executed after the

m arriage which indicated a joint-marital interest in the real property.

9. The residence in Neola, Utah was purchased and constructed using the premarital and separate funds of the Respondent as accounted for in Respondent's Exhibit 15. There was no proof at trial that there was any enhanced or increased value over and above cost of constructing the residence by the Respondent's separate funds. Therefore, the Neola residence should be awarded to the Respondent free and clear of any claims by the Petitioner and the Petitioner should be required to execute all necessary documents to transfer that interest.

10. Based upon the reservation of the allocation of costs by the court, the Petitioner should be required to pay all of the costs and expenses incurred in these divorce proceedings to determine valuation of Brough Trucking and Crane Service, Inc. to reimburse the Respondent for all out of pocket costs made prior to trial in relation to valuating the assets of the corporation and hold him harmless therefrom.

11. It is equitable under the facts and circumstances of the case that each party assume and pay their own attorney's fees and costs, except the Petitioner should be responsible for the amount of \$3,798.75 in appraisal organization fees to Randall Gaither, Attorney at Law, and the Respondent is entitled to a Judgment in that amount.

12. The Respondent's business incurred \$8,672.08 in expenses as set forth in Exhibit 8 the Itemization of expenses of Amanda Hansen and/or Kristy B. Clayburn, employees of Brough Trucking and Crane Service Inc. in assembling material and

assisting in Court ordered appraisals and this is a factor in determining that the Petitioner pay for her own attorney's fees and costs. The Respondent prevailed on the execution of the premarital agreement and this is a factor in requiring the Petitioner to pay her own attorney's fees and costs.

13. The costs and expenses of the valuation by the expert, Brad Townsend, were unnecessary in light of the fact that any value that he found was based upon the equipment appraisal by a third party and using the Property Tax Assessment from public records.

14. It is equitable to require the Petitioner, in light of the prenuptial agreement to assume and pay any of the costs of the appraisal, which she requested including the two business appraisals and a Judgement shall be entered requiring the Petitioner to reimburse all of the costs of the Respondent which has paid to Brad Townsend and Ron Liese.

15. It is equitable that each party assume and pay the costs of the real estate appraisals of the Neola, Utah property which was received into evidence and no judgement should be awarded for those costs.

16. It is equitable in light of the Court's consideration of the evidence that each party should be awarded the personal property presently in their possession.

17. The Petitioner should be ordered to assume and pay the debt owed on the 2001 Blue Dodge pickup truck in the amount of \$4,557.14 as of June 10, 2008 to Mountain America Credit Union. (Respondent's Exhibit 14)

18. The Respondent's premarital assets were not co-mingled with marital property, and he maintained them as separate entities, except for the Neola Residence which has no value over and above the premarital and separate assets traced directly into the construction of the residence.

19. The Respondent should be awarded a Judgment in the amount of \$322.50 for costs in relation to the business asset, the computer, taken by the Petitioner.

20. The Respondent should be awarded all costs to be submitted by a post Judgment Affidavit.

**MEMORANDUM IN SUPPORT OF PROPOSED FINDINGS
AND CONCLUSIONS OF LAW**

POINT I

THE NOTARIZED PRENUPTIAL AGREEMENT IS ENFORCEABLE IN THESE PROCEEDINGS.

Utah Code Annotated § 30-8-3(1953) states that "A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration." In this matter there is adequate consideration in that the Petitioner was to be held harmless from business obligations upon divorce. The specific naming of the business and the consideration of the hold harmless from business debts reinforces the enforcement of the of the agreement as to N. J. Trucking Inc., the Glass Store and any personal or family properties of the Respondent.

In *Rudman v. Rudman*, 812 P.2d 73, 161 Utah Adv. Rep. (Ct App 1991) the

Court stated the facts as follows:

The Rudmans were married on April 18, 1981. Both parties had previously been married and divorced. At the time of the marriage, Mrs. Rudman had been receiving \$1,100 per month in permanent alimony from her former husband. Part of Mr. Rudman's premarital property included several movie theaters in three states, two condominiums, and a cabin. Prior to the marriage, Mrs. Rudman's counsel prepared a prenuptial agreement, which the parties signed on April 15, 1981. The agreement stated that each party relinquished all claims and interest to property the other had acquired prior to the marriage and that such property could not be deemed a marital asset following the marriage. The agreement was "not intended and does not apply to any property which is accumulated by the parties either individually or jointly following the marriage of the parties."

The court found that **Mr. Rudman's premarital assets were not commingled with marital property, and that he maintained them as separate entities, including those that were improved through expansion or remodeling.** Thus, under the parties' prenuptial agreement, the loan receivables were properly characterized as premarital assets, as were the condominiums and the cabin.

Mrs. Rudman contends the trial court erred in interpreting the prenuptial agreement. She argues that the agreement specifies that any interest and appreciation accruing to premarital property after the marriage becomes marital property. **Mrs. Rudman also claims the court abused its discretion in failing to find that she contributed labor and/or assets to his premarital property, thus converting it to marital property.** Specifically, she claims the court abused its discretion by failing to find that she assisted Mr. Rudman in the operation of his business by helping to "remodel, clean, vacuum, paint, run errands, make and hang drapes, purchase and prepare food... and work as a ticket taker," thus converting those businesses to marital property. She claims the court abused its discretion in failing to find that she improved and furnished the condominiums and the cabin, resulting in those properties becoming commingled into the marital estate. She also claims the court abused its discretion in finding that loans made to various business entities operating Mr. Rudman's theaters were due to Mr. Rudman alone, rather than to the marital estate. Mrs. Rudman claims that improper exclusion and improper valuation of this property reduced the marital estate by \$472,589.

In *Rudman*, the trial court found that a fair reading of the agreement clearly separated premarital property from property accumulated after the marriage. The trial court also found that, under the agreement, any premarital property, together with any interest or increase, would remain the property of the owner, and any property acquired after the marriage would be marital, "less that amount utilized for its acquisition that can be traced to a point prior to the marriage." The Court of appeals stated:

We find no error in the trial court's legal interpretation of the document. Under the terms of the prenuptial agreement, where each party relinquished all rights to previously acquired property of the other party, he or she would also have no right to any increase in value or additional earnings that might accrue to that property. Likewise, any property acquired by the parties after the marriage would accrue earnings into the marital estate. Additionally, if any amounts used to acquire property during the marriage could be traced to premarital property, those amounts would remain the separate property of that individual. Thus, to preserve the premarital integrity of an asset that has been arguably commingled with property acquired after the marriage, that asset, or its severable part, must be traced to its original source.

In *Ron Case Roofing & Asphalt Paving Co. v. Blomquist*, 773 P.2d 1382 (Utah 1989) the Court indicated that a resort to extrinsic evidence of the parties' intent is permissible only if the contract document appears to express the parties' agreement incompletely or if it is ambiguous in expressing that agreement. Here, the Petitioner's comment that about what Mr. Brough's description of the premarital agreement was is irrelevant.

The Respondent respectfully submits that the premarital agreement should be enforced in these proceedings.

POINT II

THE PETITIONER FAILED TO PROVE ANY CO-MINGLING OF SEPARATE PROPERTY.

In Utah, marital property is ordinarily divided equally between the divorcing spouses and separate property, which may include premarital assets, inheritances, or similar assets, will be awarded to the acquiring spouse. *Olsen v. Olsen*, 169 P.3d 765 (Utah App. 2007) In the recent decision in *Stonehocker v. Stonehocker*, 176 P.3d 476, 2008 UT App 11 (Utah App. 01/10/2008), the Court stated:

The Utah Supreme Court has determined that when one party in a divorce proceeding uses separate property to purchase a marital home, that party is entitled to the equity in the home that resulted from his or her investment. See *Newmeyer v. Newmeyer*, 745 P.2d 1276, 1278 (Utah 1987) (upholding trial court's ruling that the wife should receive credit for her inherited separate property that she invested in the parties' home during the marriage). But [t]he rule that property acquired by gift or inheritance by one spouse should be awarded to that spouse . . . does not apply when the property thus acquired is consumed, such as when a gift or an inheritance of money is used for family purposes; when the property completely loses its identity and is not traceable because it is commingled with other property . . . ; or when the acquiring spouse places title in their joint names in such a manner as to evidence an intent to make it marital property. *Mortensen v. Mortensen*, 760 P.2d 304, 307 (Utah 1988) (citations omitted). The trial court treated the \$81,000 of equity in the Family Home as Wife's separate property to compensate her for the \$90,000 of her inheritance used to improve that asset. Although we are unable to evaluate the overall property settlement because of the lack of findings on value, the recognition of Wife's separate property interest in the improvements to the Family Home was within the trial court's broad discretion.

In *Cox v. Cox* 877 P.2d 1262 (Ut Ct. App 1994), the Court recognized equitable factors

relevant to equitable factors to this proceedings. The Court stated:

Where the marriage is of short duration, where no children were born and where the couple was married later in life, a trial court may properly attempt to restore the parties to their premarital status. See, e.g., *Georgedes v. Georgedes*, 627 P.2d 44, 45 (Utah 1981) (trial court did not abuse discretion to put parties to short second marriage back into sole ownership of premarital properties); *Jespersion v. Jespersen*, 610 P.2d 326, 328 (Utah 1980) (where husband was 73 and wife was 68 at time of marriage, and where marriage was short, trial court did not abuse discretion in awarding premarital home to wife even though she deeded it in joint tenancy to husband).

In addition, a trial court may properly consider other factors relating to distribution of premarital property including the amount and kind of property to be divided; whether the property was acquired before or during the marriage; the source of the property; the health of the parties; the parties' standard of living, respective financial conditions, needs, and earning capacity; the duration of the marriage; the children of the marriage, the parties' ages at time of the marriage and of divorce; [and] what the parties gave up by the marriage. *Hogue v. Hogue*, 831 P.2d 120, 122 (Utah App. 1992) (quoting *Burke v. Burke*, 733 P.2d 133, 135 (Utah 1987)).

In *Cox*, the Wife claimed the trial court erred in finding that appreciation on the house was not due to her remodeling efforts. The Court affirmed the trial court in its memorandum decision which determined that once Husband's and Wife's expenditures were deducted from the \$105,000.00 value of the house, the residence had not materially appreciated.

As to the scope of the agreement, in *Berman v. Berman* 749 P.2d 1271, (Ct App. 1988) the Court of Appeals stated:

Plaintiff argues that the antenuptial agreement only concerned the defendant's business assets, not the house, because the only asset specifically mentioned in the agreement was the billiard business. Defendant argues that the agreement means exactly what it says and exempts "real and personal property," including the

house, from inclusion in the marital estate. The house should have been preserved as the separate property of defendant. We find the trial court erred when it did not include the house in the antenuptial agreement.

At trial, the Petitioner testified that the parties kept their finances “separate”. However, in the closing arguments at trial, the attorney for the Petitioner claimed that there was some type of a “marital pot” implying that there had been some co-mingling of funds during the course of the marriage and the court should in some manner limit the premarital contract.

However, an objective review of the evidence will show that each party maintained separate checking accounts and credit cards. For example, the Petitioner indicated that after the marriage she received some separate money from a prior divorce which she placed in her separate checking account and paid personal expenses on her separate credit cards from her personal account. The evidence concerning the fact that she kept hours, received W2 forms and received corporate checks and deposited those checks into her separate checking account prove the opposite of co-mingling of funds by the parties. Mr. Brough sold business assets and property he owned prior to the marriage and placed them in separate checking accounts.

In relation to the evidence of landscaping and doing some work on the Neola residence, see *Johnson v. Johnson*, 2007 UT App 329 (Utah App.2007), the court stated:

Husband next argues that the trial court misunderstood or misapplied the law in determining that the appreciation on the real property was Wife's separate property, as opposed to marital property subject to an equal division among the parties. Husband does not dispute that the real property

was purchased from Wife's premarital funds and, thus, was initially Wife's separate property. Nor does he dispute that any appreciation on Wife's separate property would also be considered Wife's separate property. Husband appears to argue, however, that events within the marriage converted this separate property into marital property.

Premarital property loses its separate identity and becomes a part of the marital estate if "(1) the other spouse has by his or her efforts or expense contributed to the enhancement, maintenance, or protection of that property, thereby acquiring an equitable interest in it, or (2) the property has been consumed or its identity lost through commingling or exchanges or where the acquiring spouse has made a gift of an interest therein to the other spouse." *Oliekan v. Oliekan*, 2006 UT App 405, ¶20, 147 P.3d 464 (quoting *Mortensen v. Mortensen*, 760 P.2d 304, 308 (Utah 1988)).

We are not persuaded by Husband's arguments that his purported efforts--including doing some tile work in the home and "supervising" landscaping and home theater installation--were sufficient to obtain an equitable interest in the home. Instead, we agree with the trial court that "[Wife] kept the asset separate" and that the facts do not support a finding that "[Husband] made any contribution to the house" other than possibly a monetary contribution toward landscaping and tile--a portion of the one deposit made into Wife's separate account--for which the court ordered reimbursement to Husband.

The Petitioner did not prove the separate property has been consumed or its identity lost through commingling or exchanges.

POINT III

EACH PARTY SHOULD ASSUME AND PAY THEIR OWN ATTORNEYS FEES AND THE RESPONDENT SHOULD BE ORDERED TO PAY AND REIMBURSE THE COSTS OF THE EXPERTS.

From the commencement of this action, the Respondent has been faced with an

expensive appraisal process. When the report was finished right before trial, the expert witness fees totaled approximately \$17,000.00. These pretrial costs were incurred because the Petitioner choose litigation to disregard her signed agreement and claimed a substantial business interest in the business, going to far as to obtain an TRO as to the business.

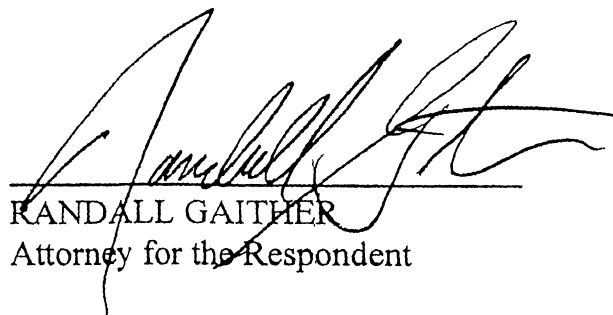
At trial, the expert Brad Townsend indicated that there was not sufficient grounds to determine any enhanced value of the corporation during the marriage. The Petitioner who was familiar with the one man business, chose to litigate at great cost to attempt obtain an interest subject to that agreement when she should have known there was no value to distribute. A graphic example of this point is the fact that when Mr. Brough broke his foot the business had to borrow funds on the Neola residence.

Since the Petitioner drastically increased the costs and expenses of this legal action by making a claim for a substantial portion of the Respondent's business and business assets. The Petitioner should be pay the costs. Concerning the administration of justice in all divorce cases, it is not sound policy to allow with a party that signed a premarital agreement to require the other spouse to advance substantial costs and expenses to the allow the spouse to attempt to "swing for the fence". The Respondent prevailed on the business issues and the Petitioner should pay for the expensive litigation costs of her own experts.

The Respondent respectfully submits that in this specific situation the factors

require the Petitioner pay her own attorneys fees as well as the costs of the attempt to prove a business interest. The Court should take into account the fact that Mr. Brough was required to pay extra business costs, lose of time to coordinate the appraisal, expend employee expenses, accounting fees and substantial attorneys fees. These costs accrued up until the expert announced his decision on the day before trial that there was no goodwill, no enhanced value or value over the return of Mr. Brough for his services and expertise. In light of the valid prenuptial agreement it is equitable that the Petitioner reimburse the Respondent for any attorney's fees and costs, including mailing costs, incurred in preparing and organizing documents and information delivered to the experts for appraisals of the business of \$3,798.75. The Respondent should be awarded of all costs of this action.

DATED this 8th day of August, 2008.



RANDALL GAITHER
Attorney for the Respondent

FAX/MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing RESPONDENT'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND MEMORANDUM was faxed and mailed to:

CLARK B. ALLRED
ALLRED & MCCLELLAN, P.C.
72 NORTH 300 EAST
ROOSEVELT, UTAH 84066
FAX: (435) 722-3928

✓ W.R.J. Brough

DATED this 8 day of August, 2008.

[Signature]

LAST PAGE OF AFFIDAVIT
AND ATTACHMENTS

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FILED
DISTRICT COURT
DUCHESTER COUNTY, UTAH

SEP 25 2008

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IN THE EIGHTH JUDICIAL DISTRICT COURT OF DUCHESTER COUNTY
ROOSEVELT DEPARTMENT, STATE OF UTAH

KATHRYN C. BROUGH,	)	MEMORANDUM IN OPPOSITION TO:
	)	1. MOTION FOR NEW TRIAL
Petitioner,	)	2. OBJECTIONS TO FINDINGS OF
	)	FACT AND CONCLUSIONS OF LAW
	)	3. MOTION FOR RELIEF FROM
	)	JUDGEMENT AND ORDER
	)	4. MOTION TO ALTER OR AMEND
	)	JUDGEMENT
vs.)	
)	
RICHARD JAMES BROUGH,	)	Civil No. 054000084 DA
)	
Respondent.	)	Judge John R. Anderson

Petitioner submits the following memorandum in opposition to the following motions submitted by Respondent:

1. Motion for New Trial
2. Objections to Findings of Fact and Conclusions of Law
3. Motion for Relief from Judgement and Order
4. Motion to Alter or Amend Judgement

Petitioner is submitting one memorandum rather than a separate memorandum for each motion since the arguments and issues raised in

each motion are essentially the same, and multiple memoranda would, therefore, be duplicative.

BACKGROUND

Trial was held in this case on July 9, 2008. Petitioner and her witnesses testified that, during the marriage, she remodeled the Duchesne house, built living quarters in the Roosevelt shop where the parties lived, supervised the construction of the Neola house and completed the construction when the Respondent ran off the contractor, raised the Respondent's two teenage children, prepared the meals and cared for the home and also worked in the business helping enhance its growth and prosperity. She cosigned on loans and put what money she had into the properties. That evidence was not rebutted. Respondent claimed all the assets were his premarital assets or were acquired with premarital assets. However, the evidence showed that there was debt on premarital assets such as the Duchesne home and the Bandana Ranch property which debt was paid with marital funds, that any monies from the sale of assets were commingled and used to pay operating expenses, that numerous assets had been added to Brough Trucking and the nature of the business had changed thru the efforts of both parties, and that assets such as the Ballard property and the Neola home were jointly acquired and jointly titled.

Respondent was unable to trace any alleged premarital monies or assets to present assets.

Both parties submitted pretrial briefs and both parties argued the case at the conclusion of the trial. Petitioner's position was that assets had been acquired during the marriage and/or improved, changed and enhanced during the marriage and should be divided equally. Respondent's position was that, despite the years of marriage, the raising of his children and the Petitioner's working to improve and enhance assets, everything belonged to him and Petitioner should get nothing and, in fact, should pay for the costs of the appraisals and Respondent's costs and fees incurred in responding to discovery.

The Court took the case under advisement and asked each party to submit, by August 8th, proposed findings of fact and conclusions of law and a decree of divorce for the Court's consideration. Both parties submitted their versions prior to or on August 8th. The Court, apparently after reviewing those documents and doing such additional research and analysis as it felt proper, agreed that the Petitioner's proposed documents were consistent with the evidence and the law and signed them on August 28, 2008.

1. The procedure of having each party submit proposed findings and a decree is customary practice in Utah courts and was appropriate.

Respondent's primary complaint is that the Court did not adopt his proposed findings and decree. As pointed out in State v. James, 858 P.2d 1012, 1015 (Utah Ct. App. 1993), where the court signed findings prepared by the state, "the trial court may request counsel to submit proposed findings."¹ Those findings will be affirmed unless the record shows "that the trial judge failed to adequately deliberate and consider the merits of the case". Id. (Quoted authority omitted). Unless the record shows "that the findings [signed by the court] don't reflect the judge's view, the appellate court 'must assume that he found them satisfactory in all particulars.'" Id. (Quoted authority omitted). "Findings prepared by counsel for a prevailing party and adopted verbatim by a trial court are considered to be those of the trial court and may not be rejected out-of-hand, but they will stand if supported by evidence." Id.

In Automatic Control Products v. Tel-Tech, 780 P.2d 1258 (Utah 1989), the trial judge, at the conclusion of the trial, took the case under advisement, allowed both parties to submit memoranda and later

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See also Whitewar v. Labor Commission, 973 P.2d 982, 986 (Utah 1998) (stating that it is common practice in Utah for the trial court to have counsel submit proposed findings).

requested both parties to submit proposed findings of fact and conclusions of law. The court signed the defendant's proposed documents and the plaintiff appealed, claiming that the court had mechanically adopted the findings prepared by counsel for Tel-Tech. The appellate court ruled that "there is no indication from the record here that the trial judge failed to adequately deliberate and consider the merits of the case." Id. at 1260. The plaintiff also complained (as Respondent does in this case) that it was not notified of the court having signed the findings. The appellate court rejected that argument, stating:

Nor was there any error in the failure of the trial court to notify ACP's counsel promptly after he had signed his findings of fact and conclusions of law and the judgment. Our rules do not require the court to give notice but put the burden on counsel to check periodically with the clerk of the court as to the date of entry of the findings and judgment so that post-trial motions may be timely filed.

Id.

2. The evidence fully supports the Findings of Fact signed by the Court.

Respondent also alleges that certain findings are not supported by the evidence. The following are the findings challenged by Respondent and the name of the witness(es) whose testimony supports those findings.

Finding No. 5 is supported by the unchallenged testimony of Petitioner.

Finding No. 8 is supported by the testimony of Petitioner, Respondent and Brad Townsend, as well as numerous exhibits relating to the checking accounts, the appraisal and the loan for the \$160,000.00.

Finding No. 12 is supported by the testimony of Petitioner and her son and was not challenged.

Finding No. 14 is supported by the testimony of Petitioner and Respondent and by exhibits including the deed, closing statement and check.

Finding No. 18 is supported by the appraisal by Mr. Barneck, the deed and the testimony of both Petitioner and Respondent.

Finding No. 20 is supported by the testimony of Respondent, especially on cross-examination, and the exhibits demonstrating that the monies from the sale of assets went to pay operating costs, not to acquire the home or other assets.

Finding No. 21 is supported by the exhibits regarding the sale of the Bandana Ranch, the documents regarding the purchase of the Neola property and the cross-examination testimony of Respondent.

Finding No. 22 is supported is supported by the testimony of Respondent on cross-examination and the exhibits regarding the sale of the Duchesne shop and the checking account records.

Finding No. 23 is supported by the documents regarding the sale of the rig, the documents regarding the construction of the home and the checking account and the testimony of the parties.

Finding No. 24 is supported by the testimony of Petitioner, the testimony of Respondent and the documents regarding the sale of the home.

Finding No. 33 is supported by the affidavit of fees and the testimony at the trial by counsel for Petitioner which was not rebutted.

Finding No. 34 is supported by the testimony of Petitioner and her financial statement exhibit.

Finding No. 35 is supported by the testimony of Respondent and the pleadings.

3. The award of fees is supported by the evidence.

Respondent also complains about the Court's awarding to Petitioner her attorney fees incurred. Primarily, he contends that the Court did not deduct fees she had managed to pay on her bill. In making that complaint, Respondent misunderstands or ignores the law on this issue. The trial court has discretion as to whether to award fees and the amount of fees. Arnold v. Arnold, 2008 UT App 17, ¶11. The Court should make findings on the financial need of the receiving spouse, the ability to pay by the payor spouse and the reasonableness

of the fees. Oliekan v. Oliekan, 2006 UT App 405, ¶10. There is no requirement that the Court deduct fees a party may have paid. In this case, the Court made findings on those required issues. See findings of fact 31, 32, 33, 34 and 35 and conclusions of law 12 and 13.

4. Respondent's claims of prejudice, that the judgment is excessive, that the Court did not address the prenuptial agreement and did not make findings on separate property is without merit and not supported by any facts, the law or the findings signed by the Court.

Respondent also alleges that the Court's decision was under the influence of prejudice and the award was excessive. He makes that assertion without any sustaining facts. The Court rejected his greedy and unsupported position that he was entitled to everything, despite the parties' years of marriage, the Petitioner's years of work to improve the Duchesne house and the Roosevelt shop and to build the Neola property, the Petitioner's raising of his children, the Petitioner's providing of cooking, cleaning and housekeeping, the Petitioner's working in the trucking business, the Petitioner's acquiring debt personally and putting her own funds into the home, and the joint titling of assets. Respondent was unable to trace any of his alleged premarital properties and the documents were contrary to his position. The facts and the law fully support the Court's decision to divide equally the assets acquired or enhanced during this marriage.

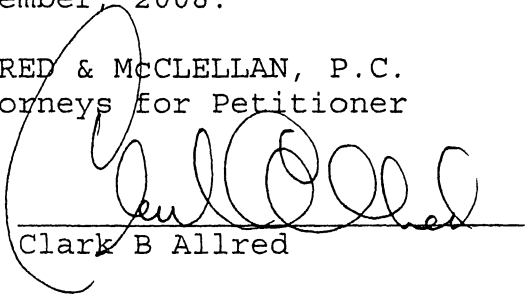
Respondent also makes the bold unsupported assertions that the Court did not address the prenuptial agreement and his claims to separate property. The findings of fact, the conclusions of law and decree address each of those issues in detail, and those findings are fully supported by the evidence. The Respondent's claims are without merit.

WHEREFORE, it is respectfully requested that the Court deny the post-trial motions submitted by Respondent.

DATED this 28 day of September, 2008.

ALLRED & McCLELLAN, P.C.
Attorneys for Petitioner

By:

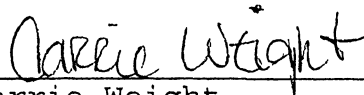

Clark B Allred

MAILING CERTIFICATE

I, Carrie Weight, am employed by the office of ALLRED & McCLELLAN, P. C. attorneys for Petitioner herein and hereby certify that I served the attached RESPONSE TO RESPONDENT'S OBJECTIONS TO SUPPLEMENTAL REQUEST FOR ATTORNEYS FEES on Respondent by placing a true and correct copy thereon in an envelope addressed to:

RANDALL GAITHER
ATTORNEY AT LAW
159 WEST 300 SOUTH BROADWAY #105
SALT LAKE CITY, UT 84101

and deposited the same, sealed, with first class postage prepaid thereon, in the United States mail at Roosevelt, Utah, on the 23rd day of September, 2008.



Carrie Weight

IN THE EIGHTH DISTRICT COURT - ROOSEVELT

DUCHESNE COUNTY, STATE OF UTAH

KATHRYN C. BROUGH,

Plaintiff,

v

RICHARD JAMES BROUGH,

Defendant.

: Case No. 054000084 DA

:

: Appellate Court No. 20080816-CA

:

:

:

:

:

: With Keyword Index

MOTION HEARING SEPTEMBER 25, 2008

BEFORE

THE HONORABLE JOHN R. ANDERSON

CAROLYN ERICKSON, CSR
CERTIFIED COURT TRANSCRIBER

1775 East Ellen Way

Sandy, Utah 84092

801-523-1186

APPEARANCES

For the Plaintiff:

CLARK B. ALLRED
Attorney at Law

For the Defendant:

RANDALL T. GAITHER
Attorney at Law

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RULING

12

1 DUCHESNE COUNTY; SEPTEMBER 25, 2005

2 JUDGE JOHN R. ANDERSON

3 (Transcriber's note: Speaker identification
4 may not be accurate with audio recordings)

5 P R O C E E D I N G S

6 THE COURT: We're on the record. This is Brough vs.
7 Brough.

8 Gentlemen, I thought probably the thing to do to
9 expedite this, I understood there was some questions about my
10 handling the case. I had asked each of you to prepare
11 findings, conclusions, and a decree and then I was going to
12 look them over and decide which one that I would sign and
13 that's all I did. I didn't intend to write another decision or
14 make any amendments. I furnished to you notes, findings of
15 fact, conclusions and a decree which I dictated to my secretary
16 in Vernal the day after this trial and if you'll read through
17 those there are some holes that are missing but basically you
18 can get the concept of what my thinking was. If you read that
19 and go through that, you'll see that Mr. Allred's findings and
20 conclusions pretty much paralleled my own thinking and that's
21 the road that I took and that's why I executed his documents.

22 Now at this point I guess we better hear from counsel
23 and see if I can satisfy your questions.

24 Mr. Gaither?

25 MR. GAITHER: Your Honor, I've seen this document

1 (inaudible) went into the clerk's office and asked for the file
2 and so I've read and looked at this and I would submit there's
3 a substantial difference between Mr. Allred's and the Court's
4 findings and this does, I would submit support our position
5 that the judgment and decree should be set aside as being
6 mechanically adopted and if that was the Court's intention, as
7 I put in my affidavit, I had no idea that it was going to be, -
8 you were going to accept one or accept the other. I've never-

9 THE COURT: I thought I was pretty clear on that.

10 MR. GAITHER: No, I don't - I guess the evidence
11 which shows what my position was is that I sent over a disk and
12 a letter saying if you need to use this because a lot of courts
13 do that, they'll take some findings from one party and some
14 from the other party and put it together. So I was assuming it
15 was suppose to be we were going to state the case in the light
16 most favorable to each party and then the Court equitably
17 weighs it and issues a ruling and there was an indication that
18 the Court was going to issue a ruling. So I was - I did not
19 submit it on that basis and I would submit that in light of the
20 confusion that's happened in this case, I received no notice -

21 THE COURT: Notice of what?

22 MR. GAITHER: Well, there was no ruling.

23 THE COURT: After the trial I indicated that I wanted
24 you to prepare findings, conclusions and a decree and I could
25 pick one or the other or make one up somewhere in between. I

1 thought I was pretty clear on that.

2 MR. GAITHER: I think - I listened to the tape, it
3 says you prepare proposed findings. I don't think there was
4 language of decree as to my recollection but I didn't prepare a
5 decree because the decree I prepared was the Court indicated,
6 well, the parties are divorced so I prepared a decree of
7 divorce which was never entered and the parties aren't divorced
8 as they sit here today even though that should have been
9 entered about a month ago. So there's been some substantial
10 procedural problems.

11 THE COURT: Let's see if we can fix them today.

12 MR. GAITHER: Well, I would like to and I would think
13 that the first step if I could and - can I make a suggestion?

14 THE COURT: Sure.

15 MR. GAITHER: That the divorce decree be set aside,
16 the one that was entered on September the 4th and that -

17 THE COURT: I thought you told me the parties weren't
18 divorced?

19 MR. GAITHER: You didn't divorce the parties, that
20 was a partial decree.

21 THE COURT: Okay.

22 MR. GAITHER: So I would suggest first is there is
23 sitting in the file and unsigned divorce decree which
24 bifurcates the issues, divorces the parties, reserves the
25 property issues and then we could set this for a hearing and

1 then I would be happy to address these proposed findings of
2 fact and conclusions of law of the - the rules provide that the
3 Court can consider those issues. But the problem with the
4 divorce decree is it's putting a lot of pressure on my client.
5 He's down to 60 days to come up with over \$300,000 and the way
6 that's drafted, he's had to make a contested election because
7 the way that counsel prepared it they only had 15 days from
8 that date. So it's been very difficult for him to do that.

9 And one of the things, if the Court adopts some
10 findings, as far as the mechanics of the decree, it's my
11 position that this was done by petitioner's counsel for
12 petitioner's benefit and placed my client in a very difficult
13 situation and if the decree is set aside, I understand which
14 way the Court is leaning. I believe that there are some errors
15 that can be shown to the Court and there's a ruling here, I
16 mean, as I read this one -

17 THE COURT: Please understand that isn't a ruling,
18 that's just some notes to -

19 MR. GAITHER: Some notes, right.

20 THE COURT: - solidify my thinking from the day after
21 the trial.

22 MR. GAITHER: I understand that and what I would
23 propose is that I be able to file some - we have a hearing on
24 the objections that I've made to the decree and to the findings
25 and I will try on behalf of my client to take this new tact of

1 saying, okay, well, we're going to try - instead of trying to
2 object to everything, find the best shot that he has to try to
3 convince the Court of the equities of the situation which I
4 didn't do in the last one, and maybe we can do in the next one
5 and then the Court can then - I'll submit a proposed decree on
6 the property issue which I've never done and I'd like to be
7 able to produce something that would separate the house from
8 the business so that's it's possible he could do a partial
9 settlement of the house as opposed to the business, try to keep
10 those separate. So I would move the Court to grant the Motion
11 to Set Aside the Decree of Divorce entered on September 4 and
12 set this matter for further hearing and I've got my calendar.

13 THE COURT: Okay, the way this would normally work I
14 suppose would be after we hear from Mr. Allred, let me give it
15 some thought. Let me find the decree you're talking about.
16 Was that the one Allred prepared?

17 MR. GAITHER: Yes, it was the one -

18 THE COURT: What's the date on that?

19 MR. GAITHER: It's signed on August 29, entered on
20 September 4th.

21 THE COURT: It's come to my attention also that the
22 personal property items from the evidence that I heard, there
23 wasn't too big of a dispute about those and I was going to
24 order that the parties either get those settled on their own or
25 go to mediation. As I recall Mrs. Brough wasn't claiming a

1 substantial amount of personal property.

2 MR. ALLRED: That was, I think Exhibit 24 or
3 something like that. Most of the stuff she had before they got
4 married.

5 THE COURT: Okay, I want to hear from Mr. Allred.

6 MR. ALLRED: Your Honor, at the conclusion of the
7 trial, the Court indicated it was going to take the matter
8 under advisement. Counsel for the respondent asked if the
9 parties could get divorced while it was under advisement and
10 the Court indicated, yes, and bifurcated it. So I agree - and
11 Mr. Gaither did send shortly after the trial a proposed decree
12 to the Court. I saw it, did not object to it. All it did was
13 divorce the parties and the paperwork I prepared at the other
14 request made by the Court was that the parties submit by the
15 8th of August proposed findings, conclusions, I understood a
16 decree. I drafted those shortly after the trial and submitted
17 those as requested by the Court as to counsel for the
18 respondent and the decree I furnished did indicate that the
19 Court had already entered an order divorcing the parties but
20 that's not been signed. That probably needs to be done that
21 they need to get divorced.

22 I see no basis for the Court to set aside what has
23 happened here or to have more hearings. We had a full date
24 trial, both parties submitted briefs before the trial that went
25 to their issues and then we had the trial and then the Court

1 indicated what it wanted and it was my understanding, it's not
2 the first time the Court has asked for proposed decrees nad
3 findings or orders and findings and sometimes the Court will
4 agree with one or the other or do something in between and so I
5 drafted it so that I thought it was consistent with the
6 testimony, much of which was undisputed.

7 I've just barely seen what the Court has handed out
8 but just going through that quickly, it seems very consistent
9 with exactly what was drafted here. Basically what we have
10 here is that the respondent says everything is mine, petitioner
11 doesn't get anything and not only that she ought to pay my fees
12 and costs. Our position has been they'd been married 10 years,
13 my client remodeled his Duchesne house, she remodeled the
14 Roosevelt shops, she constructed the Neola home, she worked in
15 the trucking business as they built that up and was making
16 about \$170,000 some odd when they married and was making
17 \$800,000 when they separated and had significant more assets
18 and a name change and change of business. So she was involved
19 in the increase and that. She raised two of his children, did
20 all the homemaking, put whatever money she had into this family
21 and into the assets -

22 THE COURT: Mr. Gaither, let me ask you a question.
23 Are the parties divorced or not?

24 MR. GAITHER: No.

25 THE COURT: You prepared a bifurcated decree

1 divorcing them and Mr. Allred says he approved it and I don't
2 see it in the file. So what -

3 MR. GAITHER: It's in the file. It's there, I saw it
4 a few minutes ago. It's just not signed.

5 THE COURT: It's not been signed?

6 MR. GAITHER: It's unsigned.

7 THE COURT: Okay, well that's an oversight on my part
8 probably.

9 MR. ALLRED: It just needs to be done. It's not a
10 big deal.

11 The facts again - all that was undisputed and I think
12 both the Court felt that as I look what the Court did here and
13 the documents I've put forth shows that and it's very
14 consistent with the case law. There's a ton of cases that say
15 when parties work like that jointly even though he may have
16 kept the title in his name and other things, it becomes marital
17 property and all those are footnoted in the findings.

18 The argument, well, the Court can't mechanically
19 adopt the findings which is really the basis of the motions by
20 the respondent is the case law says that he has the burden to
21 show that the Court did that and the Court has pretty well made
22 it clear right here now that that didn't happen. The Court
23 actually drafted out its thoughts the day after and I'm sure
24 read all the documents carefully and adopted those that were
25 consistent with the facts of what the Court decided.

1 The respondent's got the burden and I don't think
2 there's anything to show that. The findings that he listed as
3 not being supported, in the memo I've submitted went through
4 and listed the exhibits and the witnesses to support those
5 findings. A lot of the findings that he objected to were his
6 own client's testimony on cross examination where he conceded
7 that, you know, they intermingled funds and they spent monies
8 for various things and monies he claimed for premarital things
9 were actually two years before the house was built or anything
10 like that and had been used in the business for other reasons.
11 A lot of the monies were used to support the family and support
12 the business for the year plus that he had a broken leg.

13 I don't see any reason for the Court to change
14 anything the Court has done. I'd ask the Court just to sign
15 the bifurcated decree so they're divorced and be done with it.
16 I really object to counsel's new suggestion is that he be given
17 time to write some more motions and have another argument.
18 It's just time to move forward. I don't know if the Court has
19 any question for me but what the Court has done is fully
20 supportable and very consistent with the facts and the law in
21 this case. Thanks, Your Honor.

22 THE COURT: Okay. Anything else, Mr. Gaither?

23 MR. GAITHER: Your Honor, I haven't argued all the
24 objections. That would take at least an hour, an hour and a
25 half but if you look at the finding, the potential finding, you

1 indicated N.L. Trucking was worth \$200,000 as of the date of
2 the marriage. That hasn't been backed out of Mr. Allred's, so
3 there's a \$200,000 difference between the decree you signed and
4 this document and so there is a substantial difference, it's
5 not the same and this document talks about the house value of
6 \$312,000 where Mr. Allred took his \$325,000 appraisal and
7 didn't take into - this is what I expected - a usual balancing
8 of the case and then -

9 THE COURT: I thought there was -

10 MR. GAITHER: - there is a substantial difference.

11 THE COURT: - I thought you guys stipulated on the
12 value of the house?

13 MR. GAITHER: No.

14 THE COURT: Was there opposing -

15 MR. GAITHER: There's two appraisals, one for \$305
16 and that's why the day after you took the \$305 and the \$325 and
17 you split it down the middle which was a balancing and
18 equitable consideration of the case that I expected in ruling
19 that never came and now that we have this, Your Honor, I
20 suppose we need to have this marked as an exhibit. I think
21 that in light of the problems that exist I would ask the Court
22 to just set aside the divorce decree. The mechanics of the
23 divorce decree are very difficult. It says my client has got
24 to come up with \$385,000 which doesn't give him the value of
25 his premarital property and he's got to come up with that in 60

1 days from now essentially because a month has gone by in a
2 financial market that's very difficult for him to borrow money
3 and at the very minimum there should be some equitable
4 situation and if the Court entered the findings, we should at
5 least have some input in the decree under Rule 7, that talks
6 about decrees, we're able to see that and what the Court did
7 here was adopt Mr. Allred's in total, his mechanical approach
8 which just favored his client and put the clamps on my client
9 in a very difficult situation and so I would request that there
10 be a hearing on my motion for a new trial, especially in light
11 of the fact that we've just seen this situation. I think that
12 the rule for a new trial provide that the Court in an equitable
13 consideration like this can amend the findings but I would
14 submit that these are, by mechanically adopting and I found
15 cases that support my position, mechanically adopting one side
16 or the other in any civil case is in error and by doing it in a
17 divorce where there's got to be weighing and balancing on each
18 issue, on attorney's fees issues, on the house, on the business
19 and what's happened here is we've got the argumentative
20 position of counsel which the Court is adopting and I don't
21 believe that that's been fair. It doesn't have the - I can
22 indicate to my client it does not have the appearance of
23 fairness and we would ask that the decree be set aside and so
24 there be no final judgment and order. Otherwise we're in
25 another mess because we've got a final judgment and order that

1 requires an election. He's been forced to make that election
2 under protest but the time is running and so if we set this for
3 30 days down the road to give us a change to show the Court the
4 errors, there's also an error about the liabilities. This
5 \$160,000 that's owed on the house was never on the business and
6 if she's going to get the business, then she gets half that
7 \$160,000 debt. That's another \$80,000. So there's a \$280,000
8 swing that the Court has never really considered but if we come
9 back in a month and then the Court denies it then he's -
10 without setting aside the divorce decree, he's still under the
11 gun, he's facing the gun of having to come up with \$385,000
12 within 30 days and that's not fair.

13 THE COURT: Okay. I guess the parties having been
14 heard, let me indicate that when I reviewed both of your
15 proposed findings and conclusions I did not mechanically adopt
16 Allred's findings but they were consistent with my own
17 thinking. The only reason I show you those notes from my
18 dictation the day after trial was just to show you where I was
19 and what I was thinking. If Allred's findings vary somewhat
20 from those notes, that's fine. When I reviewed his I totally
21 agreed with what he put down and how it was presented. I'm
22 sorry that the time frames are not consistent with what's going
23 on. I expect the attorneys could work something out on that,
24 given the situation that's before us but I'm not going to set
25 aside the findings and conclusions and the decree. I will sign

1 the decree divorcing the parties. They will divorced today as
2 soon as my clerk enters it and I'm not going to - you know, if
3 you want to make a motion for a new trial I'll hear that but
4 I'm not going to set this aside and allow you to reargue the
5 case. We already did that.

6 MR. GAITHER: Your Honor, first order of business is
7 we need to make these findings I've been handed as part of the
8 record in this case.

9 THE COURT: I don't know. I guess I have no
10 objection to that but it wasn't intended to be part of the
11 court file when I prepared it. So with that having been said,
12 if you want to make it an exhibit you're welcome to do that.

13 MR. GAITHER: All right, I'd like to make this an
14 exhibit then. At this time I'd offer Defendant's Exhibit 1
15 pending motion for a new trial.

16 THE COURT: I'll receive it.

17 (Defendant's Exhibit 1 received)

18 MR. ALLRED: And I just want to (inaudible) I assume
19 the record has the Court's comments on the purpose of that?

20 THE COURT: Yeah. I don't want the record that goes
21 to the Court of Appeals to have anyone say that this is a
22 proposed ruling. All it is is a matter of formulation of
23 present thought impressions the day after the trial and I
24 dictated those in some hurry and I didn't intend them to be
25 actual final conclusions of decree. I just wanted to recall in

1 my own mind what I was thinking and I only offer this Exhibit 1
2 as evidence of that. Having reviewed the concept of that
3 Exhibit 1 and reading Mr. Allred's pleadings that he filed, I
4 found them to be consistent in terms of my thinking and
5 weighing the equities. So, I suppose if anyone is confused
6 about my ruling and why I did it, that's why I did it.

7 MR. GAITHER: Well, Your Honor, you've just - that's
8 not true, that's not correct. There is a \$200,000 difference
9 between those two. In the one that you indicated you said the
10 business was worth \$200,000 before the marriage. Mr. Allred
11 said it was - didn't account for that \$200,000. That's a
12 \$200,000 difference. So for the Court to state that they are
13 essentially the same is not a correct statement and -

14 THE COURT: Maybe it isn't. I didn't have the record
15 in front of me. I'm just going off the top of my head.

16 MR. GAITHER: And I have filed a Motion for a New
17 Trial and is the Court denying the Motion for a New Trial?

18 THE COURT: Yes, I will.

19 MR. GAITHER: And is the Court denying the Motion to
20 Amend and Correct the findings of fact?

21 THE COURT: Yes, I thought I was pretty clear on
22 that.

23 MR. GAITHER: And let me make sure what other motions
24 I have pending.

25 THE COURT: I'll give you the address of the Court of

1 Appeals if you want.

2 MR. GAITHER: I know the address. I have a notice of
3 appeal right here, Your Honor.

4 THE COURT: All right.

5 MR. GAITHER: All right, I filed objections to
6 findings of fact and conclusions of law and I've supported
7 those with a memorandum. I prepared this (inaudible) with oral
8 argument.

9 THE COURT: Yeah, I've read those.

10 MR. GAITHER: All right. Is the Court denying those?

11 THE COURT: Yes.

12 MR. GAITHER: I filed a Motion for a New Trial.

13 THE COURT: Denied.

14 MR. GAITHER: I'm filing a Motion to Alter and Amend
15 the Judgment?

16 THE COURT: Denied.

17 MR. GAITHER: Filed a Motion to - well, to Stay the
18 Proposed Judgement and Order?

19 THE COURT: That was on the basis of what?

20 MR. GAITHER: That was on the basis that the 15 days
21 in the decree would run before today and it was just a matter
22 of simple accommodation of a party - the Court did sign it so
23 my client had to file a notice of election under protest. So I
24 guess that one would be moot because counsel does acknowledge
25 that (inaudible) received a notice of election.

1 MR. ALLRED: No, haven't seen it.

2 MR. GAITHER: You delivered the notice of election to
3 his office?

4 MR. BROUGH: Got a receipt.

5 MR. ALLRED: (Inaudible).

6 MR. GAITHER: What's that?

7 MR. ALLRED: I've been in my office all morning,
8 nobody has given -

9 MR. GAITHER: No, it was a week ago on Friday.

10 MR. BROUGH: We got a receipt.

11 MR. ALLRED: I got (inaudible) didn't receive that
12 no.

13 THE COURT: I guess -

14 MR. ALLRED: But I'll get a copy of it.

15 MR. GAITHER: What's that?

16 THE COURT: - isn't it moot?

17 MR. ALLRED: It would be moot. If he wants to appeal
18 then he can file a new motion to stay based on that.

19 MR. GAITHER: Well, the - no it wouldn't be moot
20 then. I'd ask the Court to give us until today as far as
21 filing the election and -

22 MR. ALLRED: (inaudible) copy (inaudible). I've not
23 seen it but -

24 MR. GAITHER: I prepared and my client has elected
25 Option I under Mr. Allred's decree.

1 THE COURT: What is the purpose of that? How does
2 that help your client?

3 MR. GAITHER: Your Honor, the decree that Mr. Allred
4 prepared which you adopted says that he has to give notice to
5 keep his business by paying an amount of money in 90 days and
6 he has to do that 15 days from the date of the divorce decree
7 which is the 4th and he did that prior to the -

8 THE COURT: I think in all fairness -

9 MR. ALLRED: That's not what it says. He was given
10 the option to either, if he wanted to keep the house and pay
11 her some money for it or if he didn't she could have the house.

12 THE COURT: Did he have to do that within 15 days?

13 MR. GAITHER: That's what the decree said and so I
14 filed a motion to stay that until today and then when I didn't
15 get any ruling any on that my client, I prepared a notice of
16 election on a date on September 11th and it was delivered on
17 the 12th.

18 THE COURT: Let's see if we can solve that. It
19 seemed to me because of the numbers involved here and the
20 gravity of the - not the gravity but the short time frame, I
21 would offer on my own at this time to extend that deadline. If
22 it was up today, I'll extend it another 21 days.

23 MR. GAITHER: All right, so he had 90 days from the
24 date of the election.

25 MR. ALLRED: That's fine too.

1 MR. GAITHER: And I would ask that order be prepared.
2 So the next pending motion I had -

3 MR. ALLRED: Motion for New Trial, Objection to
4 Findings and Motion for Relief -

5 MR. GAITHER: Motion of Relief from Judgment and
6 Order and I've supplied the reasons for that and the memorandum
7 and I would add to that the ruling, the - I would add to that
8 the Exhibit 1 that's been received into evidence today.

9 THE COURT: Okay. I don't know how that's different
10 from the other motions you've filed and that I've denied. Tell
11 me how it's different.

12 MR. GAITHER: What's that?

13 THE COURT: Tell me how that's different.

14 MR. GAITHER: That is different in the sense that
15 that incorporates the procedural issues that were raised about
16 the Court not issuing a ruling, about no notice of the Court's
17 decision ever being mailed to my office. It also incorporates
18 the Court's making a mechanical adoption of pleadings prepared
19 by the petitioner's attorney and abandoning - there is a
20 constitutional objection which I've made and the Court has
21 seen, that the Court has abandoned - it's our position and
22 we're going to take it up on appeal that Your Honor has
23 abandoned his constitutional duties as a judge by allowing the
24 petitioner in a divorce proceeding to prepare findings which a
25 Court adopts with proper judicial supervision. I'm in a

1 difficult position here. Your Honor made statements from the
2 bench and I'm not able to cross examine the Court but I would
3 submit that the Court by its indications and the mistakes that
4 have been made in this case, is a proceedings fraught with
5 error, fraught with mistakes, not giving adequate notice to an
6 attorney and not giving adequate notice that the Court was
7 going to essentially a flip of a coin of findings of fact and
8 conclusions of law -

9 THE COURT: I resent some of your language here, Mr.
10 Gaither. You're getting awfully close to pissing me off. Now
11 I don't know - I always give notice to counsel.

12 MR. GAITHER: Your Honor, the findings say that
13 you're going to issue a ruling. There's never been a ruling to
14 this minute issued by Your Honor.

15 THE COURT: I thought I was -

16 MR. GAITHER: That is as far as a practicing
17 attorney, that's very disrespectful that I'm telling my client
18 oh, we're going to get a ruling and we don't get anything.

19 THE COURT: Well here's the thing. I heard this
20 case, I was attentive, I submitted my thinking with that little
21 note that's been marked Exhibit 1 and as I recall, your
22 proposed findings said, well, your guy got everything and she
23 didn't get anything and I thought that was a ridiculous
24 position for you to take. When I looked at Allred's
25 conclusions and findings, I did not just mechanically adopt

1 those. I reviewed those, they squared with my thinking and I
2 signed them and I'm not going to set them aside. So I guess
3 we're really done here except for you to file your appeal.

4 MR. GAITHER: And I've got it right here but I'm
5 going to answer that. What I did, Your Honor, in preparing the
6 findings of fact is I got a CD from the Court and my findings
7 are prepared objectively based upon the evidence and you're
8 right, I did prepared them in my client's favor on all the
9 issues because the usual procedure as I set forth in my
10 affidavit is that's the way divorces work, both parties give
11 their position and then the Court has the obligation to make an
12 equitable decision based upon it's a divorce proceeding and -

13 THE COURT: And that's what I think I did.

14 MR. GAITHER: And I think you didn't.

15 THE COURT: Okay. That's where we disagree.

16 MR. GAITHER: All right. If I could file a Notice of
17 Appeal, Your Honor?

18 THE COURT: You can do that on your way out I guess.

19 MR. GAITHER: Now as far as the Motion to - I'll be
20 filing a Motion to Stay Execution for a stay of the judgment on
21 appeal.

22 THE COURT: And I think that Mr. Allred can either
23 agree, disagree or make you post a bond. I think we're done
24 here, counsel.

25 MR. ALLRED: If the Court would like I'll prepare an

1 order that denies the motions and extends that 21 days from
2 today and 90 days from the election.

3 THE COURT: Okay. I appreciate -

4 MR. GAITHER: Well I -

5 MR. ALLRED: (inaudible) on the record. You
6 indicated your would like an order?

7 MR. GAITHER: Yes and I would like to be served a
8 copy of that and I would -

9 MR. ALLRED: I will.

10 MR. GAITHER: - like an opportunity to respond to
11 that.

12 THE COURT: To what?

13 MR. GAITHER: To his proposed order.

14 THE COURT: As to what we've done here today?

15 MR. GAITHER: I'd like the rules to be followed.

16 MR. ALLRED: I will mail a copy.

17 THE COURT: I guess now I'm tracking with what you
18 said. If you'll help me, direct me to the decree divorcing the
19 parties I'll sign it now. Is that - can you give me a date on
20 that? You said you saw it in the file.

21 MR. GAITHER: There's two files. Does the Court have
22 two files there?

23 THE COURT: Yes.

24 MR. GAITHER: It might be in the other one. It's
25 loose in the other file. It was right below those proposed

1 findings that you had -

2 MR. ALLRED: (Inaudible) first part of August if I
3 recall. No wait, it was in middle of July, we tried this the
4 9th of July, wasn't it?

5 THE COURT: I'll tell you what. Why don't you guys
6 find it and bring it up here and I'll sign it.

7 MR. GAITHER: There's a yellow folder, Your Honor.
8 If you look on there, there's something on there that says sign
9 on there. It's right there.

10 MR. ALLRED: This document here, Your Honor, says
11 (inaudible).

12 THE COURT: Do we need to formally deal with the
13 issue of the personal property?

14 MR. GAITHER: Your Honor, it's my position and I
15 don't want to get into contempt but that you arbitrarily
16 adopted his list which included fixtures, furnishings and
17 delegated that finding to the attorney for the petitioner and
18 it's totally unfair and we're going to take an appeal.

19 (Whereupon the hearing was concluded)
20
21
22
23
24
25

-C-

Respondent's Exhibit Number Eight

Itemization of expenses of Amanda Hansen and/or Kristy B. Clayburn, employees of Brough Trucking and Crane Service Inc. in assembling material and assisting in Court ordered appraisals.

Hrs	Employee's Name	Description	Rate	Amount
12	Amanda Hansen	12 hrs. x 26 days x 13.00	338.00	\$4,056.00
12	Kristy Clayburn	12 hrs. x 26 days x 13.00	338.00	\$4,056.00
6	Amanda Hansen	Appraisal photos and tour of shop & office	13.00	\$78.00
6	Kristy Clayburn	File adjustment overlook of shop & office	13.00	\$78.00
4	Amanda Hansen	Photo file folder	13.00	\$52.00
4	Kristy Clayburn	Premarital house finance breakdown	13.00	\$52.00
7	Amanda Hansen	Fuel for errands	42.86	\$300.08
51	TOTAL(s)			\$8,672.08

Respondent's Ex 15

Costs of building
Neda Residence

BROUGH TRUCKING

Date:	Name	Ck#	Amount	Discrip	Deposits
05-16-01	Stewarts	CC	\$351.14	Supply	\$30000
05-25-01	Duncan	1523	\$579.98	Land	
05-29-05	Birchell	1537	\$1582	Well	
06-03-01	Wade Huxford	1541	\$500	Fence	
06-05-01	IFA	CC	\$38.99	Supply	
06-21-05	Duncan	1585	\$579.98	Land	
06-21-05	IFA	1586	\$426.20	Supply	
07-05-01	Kielabasa	1618	\$10000	Labor & Supply	
07-05-01	IFA	1619	\$219.28	Supply	
07-11-01	Allreds	1637	\$164.10	Land Scape	
07-12-01	Basin Builder	1642	\$63.66	Supply	
07-16-01	Brett Rasmussen	1671	\$7000	Labor & Supply	
07-26-01	Duncan	1669	\$579.98	Land	
08-07-01	Lowes	1697	\$1712.92	Wood & Supply	
08-07-01	Lowes	1698	\$280.50	Wood & Supply	
08-10-01	Lowes	cc	\$2041	Supply	
08-13-01	Lowes	1701	\$267.53	Wood & Supply	
08-13-01	Sears	1735	\$1500	Appliance	
08-13-01	Western Farm	1703	\$78.74	Irrigation Pipe	
08-16-01	Duncan	1737	\$579.98	Land	
08-17-01	Swains Elec	1738	\$2000	Elect	
08-17-01	George Kenedy	1740	\$3000	Fire Place	
08-27-01	Esquire Estate	1743	\$778.74	Supply	
08-27-01	Woody Stone	1744	\$1941.71	Fire Place	
09-05-01	Rick Shivers	1769	\$620	Sheet Rock	
09-07-01	IFA	1773	\$54.42	Supply	
09-07-01	Basin Builders	1781	\$14.81	Supply	
09-10-01	George Kenedy	1786	\$3032	Fire Place	
09-13-01	Roofing World	CC	\$119.91	Supply	
09-13-01	Reciept	CC	\$39.02	Supply	
09-13-01	Sears	1803	\$1261.35	Appliances	
09-14-01	Longs Plumbing	1807	\$3000	Plumbing	
09-17-01	Wade Huxford	1810	\$1150.	Fence	
09-18-01	Wyatt Huxford	1811	\$50	Labor	
09-21-01	Lowes	1812	\$1622.97	Supply	
09-25-01	Duncan	1816	\$579.98	Land	
09-25-01	Economy Floor	1819	\$4000	Flooring	
09-26-01	AMSO	1828	\$3187.69	Windows	
09-26-01	B & B Rental	1829	\$1761.84	Sheet Rock	
09-26-01	Lowes	1831	\$1202.58	Supply	
09-27-01	B Brothers	1829	\$1761.84	Labor	
09-28-01	Anderson Lum Rec		\$1405.69	Supply	
10-08-01	Tom Montoya	1848	\$50.	Labor	
10-08-01	Lowes	1849	\$382.22	Supply	
10-08-01	BlueBell Store	1851	\$3835.18	Tin	
10-11-01	IFA	1866	\$441.96	Supply	
10-11-01	Jones Paint	1876	\$134.77	Paint	
10-11-01	Basin Builders	1867	\$94.20	Supply	

10-11-01	Stewarts	1877	\$228.73	Supply	
10-12-01	Rick Chivers	1887	\$810	Sheet Rock	
10-12-01	Steve Hvidoos	1886	\$695		
10-14-01	Lowes	CC	\$282.22	Supply	
10-15-01	Big T	1891	\$6000	Furnace	
10-18-01	Dwayne Rich	1986	\$297	Labor	
10-21-01	Reciept	CC	\$40.47	Supply	
10-22-01	Steve Hvidoos	1894	\$675	Labor	
10-22-01	Rick Chivers	1895	\$712.	Sheet Rock	
10-24-01	Roy Murray	1900	\$4220	Fence	
10-25-01	Duncan	1901	\$579.98	Land	\$41200
10-31-01	Big T	1915	\$1364.37	Furnace	
11-04-01	Economy Floor	1917	\$3400	Flooring	
11-07-01	Country Cabinet	1941	\$7421.60	Cabinet	
11-07-01	IFA	1944	\$314.21	Supply	
11-07-01	Basin Builders	1945	\$227.98	Supply	
11-10-01	County Cabinet	1949	\$1488	Cabinet	
11-15-01	Jones Paint	1921	\$194.98	Paint	
11-20-01	Duncan	1970	\$579.98	Land	
11-26-01	Lowes	1976	\$587.74	Supply	
11-28-01	Fontier Lumber	1990	\$938.45	Decking	
11-07-01	Stewarts	2020	\$508.99	Supply	
11-07-01	IFA	2023	\$72.63	Supply	
12-12-01	Duncan	2025	\$579.98	Land	
12-27-01	Kielabasa	2028	\$5000	Labor & Supply	
01-12-02	Duncan	2099	\$579.98	Land	
01-30-02	Kielabasa	2132	\$10000	Labor & Supply	
02-25-02	Duncan	2181	\$579.98	Land	
03-26-02	Basin Builders	2222	\$84.99	Supply	
03-26-02	Duncan	2229	\$579.98	Land	
04-26-02	Duncan	2294	\$579.98	Land	
05-01-02	Swains Elec	2296	\$1595.65	Electric	
05-28-02	Duncan	2359	\$579.98	Land	
06-19-02	Duncan	2430	\$579.98	Land	
07-22-02	Duncan	2491	\$579.98	Land	
08-19-02	Duncan	2550	\$579.98	Land	
09-26-02	Duncan	2617	\$579.98	Land	
09-26-02	Roy Murray	2623	\$3000	Fence	
10-03-02	Tri County Con	2639	\$431.33	Concrete	
	\$140000				
10-15-02	Roy Murray	2666	\$2000	Fence	
10-22-02	Duncan	2679	\$579.98	Land	
10-25-02	Roy Murray	2681	\$1500	Fence	
11-05-02	Roy Murray	2713	\$1499.41	Fence	
11-21-02	Duncan	2733	\$579.98	Land	
12-04-02	Basin Builder	2759	\$134.75	Supply	
12-09-02	Big T	2776	\$606.85	Furnace	
12-23-02	Duncan	2802	\$579.98	Land	
01-28-03	Duncan	2870	\$579.98	Land	
02-25-03	Duncan	2911	\$579.98	Land	
03-06-03	Byron Gibson	2937	\$846	Labor	
03-25-03	Duncan	2967	\$579.98	Land	\$38510
04-24-03	Duncan	3036	\$579.98	Land	
05-21-03	Duncan	3105	\$579.968	Land	
06-24-03	Duncan	3158	\$579.98	Land	\$25000

07-28-03	Duncan	3250	\$579.98	Land
08-25-03	Duncan	3314	\$579.98	Land
09-29-03	Duncan	3357	\$579.98	Land
10-28-03	Duncan	3419	\$579.98	Land
10-20-08	Nielsons	4242	\$1500	Insert
11-24-03	Duncan	3417	\$579.98	Land
12-22-03	Duncan	3544	\$579.98	Land
01-21-04	Duncan	3602	\$579.98	Land
02-27-04	Duncan	3676	\$579.98	Land
03-15-04	Duncan	3716	\$579.98	Land
04-19-04	Duncan	3808	\$579.98	Land
04-26-04	Duncan	3810	\$579.98	Land
06-14-04	Duncan	3930	\$579.98	Land
07-08-04	Duncan	3963	\$579.98	Land
08-09-04	Duncan	4053	\$579.98	Land
09-08-04	Duncan	4117	\$579.98	Land
10-06-04	Duncan	4209	\$579.98	Land
11-22-04	Duncan	4316	\$579.98	Land
11-22-04	Leon Ross	4335	\$3648.75	Second Well
12-09-04	Leon Ross	4363	\$3648.75	Second Well
12-20-04	Duncan	4404	\$579.98	Land
01-05-05	Duncan	4439	\$579.98	Land
02-09-05	Duncan	4518	\$579.98	Land
03-04-05	Duncan	4580	\$579.98	Land
03-21-05	Desert Splash	4633	\$3871.10	Pool
04-22-05	Duncan	7693	\$579.68	Land
04-22-05	Basin Builders	4700	\$402.78	Deck
05-19-05	Harward Irr	4752	\$1000	Pipe For Well
06-01-05	Harward Irr	4806	\$1240.73	Pipe For Well
06-28-05	Duncan	4873	\$579.98	Land
07-26-05	Hank Hansen	4946	\$112	Labor Deck
08-11-05	Hank Hansen	4968	\$178.50	Labor Deck
08-29-05	Basin Builder	5003	\$1435.27	Decking

N. J Trucking

Date	Name	ck#	Amount	Discrip	Deposits
08-30-00	Farm & Title	279334	\$20,105.	Land	\$20,105.
08-04-00	DOWR	15929	\$75.00	Permits	\$75.00
12-19-00	Berry Birchell	1230	\$1120.	Well	
08-14-00	Frontier Lum	15964	\$1500.	Logs	\$1500.
01-22-01	Duncan	1284	\$579.98	Land	
02-15-01	Byron Gibson	1313	\$250.00	Perk Test	
02-21-01	Sid Scholes	1331	\$178.50	Blue Prints	
02-02-05	Duncan	1332	\$579.98	Land	
03-01-01	Duchesene County	1345	\$1287.84	Permits	
03-06-01	Byron Gibson	1347	\$3000.	Dirt Work	
03-19-01	Byron Gibson	1372	\$1000.	Dirt Work	
03-21-01	Moon Lake	EFT	\$2433	Electric	
03-21-01	Moon Lake	1374	\$811	Electric	
03-23-01	Kielabasa	cash ck	\$15000	Labor & Supply	
03-28-01	Duncan	1398	\$579.98	Land	
04-10-01	Christensen	1415	\$800.	Labor	
04-16-01	Duncan	1451	\$579.98	Land	
04-17-01	Wimelson	1452	\$142.97	Labor & Supply	
04-17-01	Kielabsa	575013	\$20000	Labor & Supply	
04-20-01	Stripper Oper	2319	\$2677.50	Labor	
04-20-01	National Farm	1461	\$269.	Supply	
04-30-01	Frontier Lum	1474	\$8434.39	Logs	
05-03-01	Wimelson	1477	\$173.	Labor	
05-04-01	Big T	1479	\$5000.	Furnace	

Jims Personal

Date:	Name:	CK#	Amount:	Discrip:	Deposits;
4/26/2001	Frontier LUM.	119	8000	Logs	
7/5/2001	Kielbasa	123	15000	Labor & Supply	
9/29/2001	Kielbasa	134	25000	Labor & Supply	
10/3/2001	Blue Bell Store	136	5000	Tin Roof	
10/10/2001	Kielbasa	137	10,000.00	Labor & Supply	
10/19/2001	Lamar Long	144	2455	Plumbing	
12/27/2001	Kielbasa	149	5000	Labor & Supply	
1/11/2001	Lamar Long	151	113.5	Plumbing	
4/4/2002	Barry Birchell	169	700	Labor	
9/27/2002	Montgomery	188	2049.6	Pipe Fence	

JOANNE McKEE, CLERK
BY DEPUTY

of marriage. The Petitioner's first marriage was when she was seventeen years of age.

During her life she had three children, all of age, and no children with Respondent.¹

3. At the time of the marriage the Respondent was 50 years old. Mr.

Brough has a high school education and after serving time in the Marines started working in the trucking industry. The Respondent started N.J. Trucking which was incorporated 17 years prior to this marriage in 1982 as a corporate business entity with the Respondent as sole shareholder.²

4. On July 9, 1998, the parties executed before a Notary Public a premarital agreement which had been typed by the Petitioner. The Petitioner contacted an attorney first and then in an effort to save costs typed the agreement. In that agreement, the Petitioner stated that she held no claim to any personal properties, assets or money of the Respondent, N. J. Trucking Inc. (now Brough Trucking & Crane Service, Inc), the Glass Store, or any personal or family properties of the Respondent. (See Respondent's Exhibit

¹ At trial the Petitioner testified that the type of work she had performed was mostly physical labor, with some secretarial experience. At the time of the trial, she said she works as a laborer. She testified that she met Mr. Brough and her fourth husband in 1993 at bar. Some time after being hired on as a shop hand and laborer the Petitioner moved in with Mr. Brough in December 1, 1997 in his Duchesne residence. When she first met Mr. Brough, the Petitioner did not have a truck and only an interest pending in relation to divorce proceeding with her fourth husband. At trial, the Petitioner acknowledged her first job was to work on fixing up the living quarters inside the residence as an employee.

² Mr. Brough had been married two times prior to the marriage with the Respondent. He had four children with his first wife and he was divorced from Nancy Brough in 1993. Respondent's Exhibit 11, the corporate return for 2007 lists Richard J. Brough as the 100% owner of stock. Respondent's Exhibit 32 indicated that Brough Trucking and Crane Service, Inc. was in good standing with the State of Utah as of the date of trial.

1)³

5. The Respondent agreed in the premarital agreement that the Petitioner would not be responsible for debts occurring from the listed properties and agreed to assume all business debts.⁴ (See Respondent's Exhibit 1)

6. Prior to the marriage, the Petitioner was the bookkeeper and receptionist at N. J. Trucking, Inc. She was an hourly employee at N. J. Trucking in 1993 for two years until 1995. The Petitioner was aware of the type of business owned by the Respondent and that the Respondent was the sole shareholder.

7. The Petitioner did not introduce any evidence or facts at trial to show that the prenuptial agreement was signed on the basis of any claim of fraud or duress.

8. After the marriage, the Petitioner maintained separate financial accounts in her name only at Zions Bank and Mountain America Credit Union. She deposited the funds which she received from employment at Brough Trucking and Crane Service, Inc. into her separate accounts. The Petitioner also deposited the funds she received from a premarital settlement as her separate property which she used to pay of her premarital

³In relation to Respondent's Exhibit One, the Petitioner described business using "Inc." and she knew it was a corporation when she typed up the agreement. She was aware that Mr. Brough owned 100% of the shares and she was never issued any shares of the corporation.

⁴Concerning Respondent's Exhibit One, Kathy Brough stated at trial, "The fact is I don't want and didn't want anything Jim had prior..." In relation to Respondent's Exhibit One the Petitioner said during cross examination that she was aware the business using "Inc" and she knew it was a corporation when she typed up the agreement. She was aware that Mr. Brough owned 100% of the shares and she was never issued any shares of the corporation.

debts. The Petitioner had separate four or five credit cards in her name. The Petitioner had \$3,000.00 in her separate accounts at the time of separation with the Respondent in 2005.

9. After the marriage, the Respondent, Richard James Brough, maintained separate, personal checking accounts in his name at Wells Fargo Bank and Mountain America Credit Union.

10. The Petitioner and Respondent resided together prior to signing the premarital agreement.

11. The Petitioner testified that she did not have a motor vehicle prior to the marriage. After, the Petitioner received a settlement from her fourth husband which she used the money to pay separate pre-marital debts for her credit cards.

12. The parties maintained separate accounts until separation and never co-mingled any funds which they received separately during the marriage in any joint-checking or joint-savings account.

13. The Petitioner never introduced any checks in evidence which proved any expenditures which she actually made to construct the residence in Neola, Utah that was jointly titled in both parties names.

14. The Petitioner spent money on temporary landscaping at a local nursery for the Neola residence which was not a cost to build and construct the residence.

15. The W-2s of the Petitioner which were received as Respondent's Exhibit Ten

state yearly income as a corporate employee of Brough Trucking and Crane Service Inc.
as follows:

YEAR	TOTAL WAGES, TIPS, OTHER COMP.
2000	\$10,640.00
2001	\$8,880.00
2002	\$7,680.00
2003	\$6,876.00
2004	\$10,588.50
2005 (year of separation)	\$4,765.60

16. The Petitioner kept track of her hours worked as an employee during the time she was employed by N.J. Trucking Inc. and/or Brough Trucking and Crane Service, Inc. In the last part of her employment, a time-card system was implemented to keep track of her hours as an employee. The Petitioner never received any check for dividends or the distribution of income. (See Respondent's Exhibit 18.)

17. Prior to the marriage, the Respondent, Mr. Brough, owned a single family residence at 19487 East River Road, Duchesne County, Utah which was sold after the marriage for approximately \$114,000.00.

18. The Respondent received a check of \$24,702.84 which was deposited in his account to construct the house in Neola, Utah. (Respondent's Exhibit 15c and 35)

19. In relation to the Duchesne property, the Respondent received a favorable tax interest and placed a first mortgage on his premarital residence which he owned 19487 East River Road in Duchesne County, Utah to finance business equipment and that note was paid when the residence was sold.

20. Prior to the marriage, Mr. Brough owned five acres near Fruitland, Utah referred to as the "Bandana Ranch", which he sold after the marriage and received \$18,521.51. (Respondent's Exhibit 35)

21. The funds from the sale of separate property were intended for and used to purchase the real property for the residence in Neola, Utah and received the same month as when the closing took place on the purchase of the property. (Respondent's Exhibit 31)

22. Prior to the marriage, the N.J. Trucking Inc. owned certain lien free business assets including oil derricks and rigs. Mr. Bough sold the assets which included oil field equipment and proceeds were directly used to pay for construction costs of the Neola residence. (Respondent's Exhibit 15c and 39)

23. The Respondent at all times is the sole owner of the business known as Brough Trucking and Crane Service, Inc. and at all relevant times he held 100% of stock in the corporation.

24. Prior in the 1990's, the Respondent had a residence and shop in Duchesne, Utah and made a business decision to move his residence and the shop to the Roosevelt area of Duchesne County, State of Utah.

25. Around the time the new shop in Roosevelt, Utah was opened, the Petitioner contacted the Respondent concerning employment. The Respondent indicated that the business had a secretary and bookkeeper. The Petitioner has hired to work in cleaning, constructing and helping to build and organize the shop, as well as other maintenance and cleaning projects at the business at an hourly rate of employment.

26. The Petitioner was compensated for her work on an hourly basis when she commenced maintenance work and construction work at the shop. She continued to keep her hours and receive income for the work in assisting to construct the residence and business which continued through the course of the business until the time she quit working for Brough Trucking and Crane Service, Inc. by writing the word "Quit" on her time-card on May 8, 2005. (Respondent's Exhibit 18)

27. The Petitioner, excluding the pickup truck, had \$3,829.00 more in joint personal property than acquired during the marriage to the Respondent. The Petitioner failed to adequately itemize the personal property.

28. On October 15, 2008, a loan from Zions bank in the amount of \$160,000.00 was obtained using the Neola Residence as collateral. The loan was used to pay business debts of Brough Trucking and Crane Service, Inc. and the corporation has paid all of the payments on the business loan.⁵

29. The \$160,000.00 loan was for a business purpose when Mr. Brough was laid

⁵ Respondent's Exhibit 9 is the amortization schedule of the loan.

up with a broken foot and the company was having difficulty operating. The Petitioner signed the loan because she was on the title to the property.

30. The Respondent should be ordered to assume that loan and refinance the loan within a reasonable time and to hold the Petitioner harmless from that loan on the Neola residence because the loan is a liability of the business.

31. At trial, the Respondent introduced exhibits which indicated that the computer contested in pretrial issues was purchased by a check from the business. (Respondent's Exhibit 22) The Petitioner to the judgment should pay the costs of copying the disk due to the fact that the Respondent claimed was not a business asset in the amount of \$322.50. (See Respondent's Exhibit 37)

32. For the Tax year 2007, Brough Trucking & Crane Service, Inc. had one full time employee, Doris Hyatt, a secretary.

33. For the year 2007, Mr. Brough's income from the business operation was \$61,370.00 and he personally paid the income taxes on 100 % of the business income based upon the Subchapter election filed by the business.

34. The Petitioner signed a corrective deed changing the title on the "Ballard" also referred to as the "Pine Tech" property to reflect the intent of the parties that the acquisition of that property was by Brough Trucking & Crane Service, Inc. (Respondent's Exhibit 13) The Ballard property is a joint venture with Byron Gibson and the trucking company. The business venture commenced when the business started acquiring property

in 2004. The 80 acres in Ballard is not marital property and is subject to the prenuptial agreement.

35. The Respondent, with the assistance of his daughters, assembled an accurate accounting of substantially all of the costs to build the Neola residence which was not contested by the Petitioner at trial. The source of funds was segregated as to each checking account in which either the business or Mr. Brough personal account deposited funds which were used to pay the construction of the residence.⁶ The Respondent also traced the source of funds into the checking accounts set forth in Exhibit 15 by deposit slips and other business records.⁷ (See Respondent's Exhibit 15)

36. The Petitioner contributed personal assistance, time and effort in building the Neola Residence but did not contribute funds. The Petitioner did not prove at trial any

⁶ Mr. Bough testified that Kathy Brough was never a signator on his personal checking account identified in the accounting of Respondent's Exhibit 15.

⁷ Exhibit 15c and Exhibit 39 were identified at trial as deposit slips and other memorandum corroborating the separate funds property deposited into the separate accounts. These deposits include:

a. \$30,000.00 from the sale of the Duchesne Property from the buyers of \$30,000.00. (See also Respondent's Exhibit 31)

b. A deposit on 05/01/2002 for sale of \$10,810.82 for Jim's House (in Petitioner's handwriting).

c. A deposit of \$54,000.00 on 05/01/2000 that was deposited into the NJ trucking account.

d. \$50,000.00 for the sale of used oil field equipment owned for 15 years.

e. \$30,000.00 from Chotaw for a Derrick purchased from the business.

f. \$5,000 Sale of used oil field equipment by cashier's check.

g. A deposit of \$3,000 for oilfield equipment sold.

h. A cashier's check in the amount of \$30,000 to Brough Trucking on 05/17/2001

monetary amounts contributed to the construction of the residence of any separate funds.

37. As set forth in Respondent's Exhibit 15(a), (b) and (c) the costs paid by the business or Mr. Brough from a personal fund to construct Neola residence are as follows:

I. Brough Trucking & Crane Service Inc. (Checking account)	\$166,373.89
ii. N. J. Trucking (checking account)	\$86,559.12
iii. Jim Brough, (personal checking account)	<u>\$73,318.10</u>
TOTAL	\$326,251.11

38. The premarital and separate property of the Respondent was used to construct the Neola residence and the total costs and expenses contributed by the Respondent from his premarital or separate funds exceeds the present market value of the Neola residence.

39. The Petitioner is not entitled to alimony and she admitted during her deposition that she resided with Ned Ross prior to this trial and she was self sufficient and could pay her expenses.

40. After the marriage, the Petitioner continued to receive an income from Brough Trucking and Crane Service Inc. which she deposited in her separate accounts at Zions Bank and Mountain America Credit Union.

41. The Petitioner testified at trial that she was financially able to make at least \$7,000.00 in payments prior to the time of trial to her attorney. In addition, after the time of separation, the Petitioner was not paying rent since March 2007 and she was buying a double wide trailer for \$10,000.00 to place free of charge on her Mother's property.

42. The Petitioner's attorney was accepting monthly payments on the continuing

obligation for attorney's fees and he Petitioner is able to continue to pay for her obligation for attorney's fees from her present income.

43. The Respondent incurred \$3,798.75 to Randall Gaither, Attorney at Law, for reasonable attorney's fees and costs necessary to provide documents, other information and to coordinate with the two appraisers concerning the business appraisals retained by the Petitioner by Court order. (Respondent's Exhibit 28)

44. The Respondent's business incurred \$8,672.08 in expenses as set forth in Respondent's Exhibit 8 which sets forth the expenses of Amanda Hansen and/or Kristy B. Clayburn, employees of Brough Trucking and Crane Service Inc. in assembling material and assisting in Court ordered appraisals of the business equipment. This is an unnecessary costs which is a factor in requiring the Petitioner to assume and pay her own attorney's fees and costs.

45. The expert witness, Brad Townsend, was selected by the Petitioner and her attorney to act as her expert during trial. The appraiser in his report stated that he was unable to determine a value for N.J. Trucking, Inc. at the time of the marriage. (Respondents Exhibit 40) Brad Townsend's total bill was \$12,707.00 and he testified that he had been paid by Mr. Bough for a retainer on October 26, 2007 for \$2,500.00 and received a check on August 24, 2007 in the amount of \$2,918.05. In June 2008 Mr. Brough paid \$1,500.00 for the appraisal by equipment appraiser, Ron Liese.⁸

⁸ On August 6, 2008, counsel for the Respondent received an invoice for \$7,563.46 from Norman, Townsend & Johnson, LLC.

46. The appraiser, Brad Townsend, did not find that there was any good will over the basic value of the equipment after receiving extensive accounting information and financial information supplied to him by the Respondent.⁹

47. The expert, Brad Townsend, testified that there was no enhanced value of the income stream of the business in excess of the amount to pay for the services of the owner/proprietor in providing services in the business.

48. The basis for valuation was the value of the sale of the equipment which was an enhanced book value based upon an equipment appraisal by Ron Liese. Mr. Liese was retained only after the appraisal by Brad Townsend which used traditional techniques for economic valuation of a small business and indicated that there was no value in the business except the value in the used equipment and assets.

49. Irregardless of the prenuptial agreement, the value of the business does not exceed the value of the services of Mr. Brough and would not be subject to any

⁹ Brad Townsend testified that Mr. Brough made all payments even though retained by Kathy Brough. Information came through Respondent's information. He indicated that the returns on investment by net income had lower value than value of tangible assets which sit idle. He indicated that in May 2008 he reached a determination after reviewing the books that there was no good will in business over tangible value of the assets. He indicated that income stream fair return for value of owner for fair salary for his work effort no additional return on assets base. Brad Townsend's opinion of a fair salary for Mr. Brough including quantify generated income, adjusted for the payment of directly out of business for personal expenditures:

2003	\$15,000
2004	\$57,000
2005	\$40,000
2006	\$ 25,000
2007	\$53,000

distribution in these proceedings.¹⁰

50. At the trial, the Petitioner did not object to the specific accounting set forth in Respondent's Exhibit 15 which demonstrated that the costs of building the Neola residence came from either the premarital business assets of the Respondent or from the Respondent's separate property in his personal checking account.

51. Based upon the appraisals received concerning the real property, the Court finds that the Neola Residence was valued at the time of separation and at the time of trial at approximately \$320,000.00 which was less than costs contributed to build and construct the residence by Mr. Brough.

52. The Petitioner never accounted for the value of any joint personal property and only testified as to the lists prepared by the Respondent. Based upon the evidence at trial and the fact that the Petitioner was allowed by the Respondent to use a horse trailer to make several trips to remove personal property when she separated, each party should be found to have in their possession at the time of trial an equal amount of joint marital property.

53. As to attorney's fees, the Petitioner incurred a substantial amount of attorney's fees in relation to her claims asserted at trial concerning her claim to the business and the Respondent prevailed on the issue of a valid prenuptial agreement.

¹⁰ There can be no good will in a business that is dependent for its existence upon the individual who conducts the enterprise and would vanish were the individual to die, retire or quit work." *Stevens vs. Stevens*, 754 P.2d at 956 (citing *Jackson v. Caldwell*, 18 Utah 2d 81, 415 P.2d 667, 670 (1966)).

54. The Petitioner testified that at the time of trial she was residing with her mother rent free and had the ability to save sufficient funds to purchase a new residence for herself and the sum of \$7,000.00 would have been sufficient but for the business claim in these divorce proceedings.

55. The Petitioner was employed and her monthly income at the time of trial exceeded her expenses.

PROPOSED CONCLUSIONS OF LAW

1. In considering the equitable factors traditionally used by the courts in distributing property in a divorce proceedings, the Court has taken into account the relevant facts that both parties were married and divorced multiple times prior to this marriage, both parties had children from prior marriages, the advanced age of the parties at the time of marriage, and the position of each party prior to the marriage. In light of the marriage of six years prior to separation, where no children were born and in which the couple was married later in life, the court should attempt to restore the parties to their premarital status.

2. The notarized prenuptial agreement dated July 9, 1998 is a valid and enforceable contract.

3. Under the prenuptial agreement, the ownership interest of Richard James Brough of N.J. Trucking Inc. which was changed by name only to Brough Trucking and

Crane Service, Inc. during the marriage is not subject to distribution during these divorce proceedings to the Petitioner based upon terms of the prenuptial agreement.

4. Further, even if the business interest was subject to distribution, the Petitioner failed to show by adequate evidence that there was any good will or enhanced value to the business after the marriage over and above the value of the services of Mr. Brough.

5. The income, profits, and the liability including the loan to Zions Bank secured by the Neola residence, of the business are excluded from distribution to the Petitioner by the prenuptial agreement. The Respondent should be ordered to refinance the loan on the Neola residence within a reasonable period of time and the Petitioner should be held harmless therefrom.

6. The property in Ballard, Utah is a business asset owned by Brough Trucking and Crane Service, Inc. as was demonstrated when a Corrected Deed was voluntarily signed and acknowledged by the Petitioner placing the property in the name of the business entity. Therefore, the property is within the scope of the premarital agreement.

7. During the course of the marriage the parties acquired certain personal effects such as recreational vehicles, television sets and furniture which were intended to be joint-marital purchases by the parties and the jointly purchased property are not included within the terms of the prenuptial agreement.

8. The property in Neola, Utah was placed in joint names and therefore the Petitioner has a legal interest by virtue of in the Deed which was executed after the

marriage which indicated a joint-marital interest in the real property.

9. The residence in Neola, Utah was purchased and constructed using the premarital and separate funds of the Respondent as accounted for in Respondent's Exhibit 15. There was no proof at trial that there was any enhanced or increased value over and above cost of constructing the residence by the Respondent's separate funds. Therefore, the Neola residence should be awarded to the Respondent free and clear of any claims by the Petitioner and the Petitioner should be required to execute all necessary documents to transfer that interest.

10. Based upon the reservation of the allocation of costs by the court, the Petitioner should be required to pay all of the costs and expenses incurred in these divorce proceedings to determine valuation of Brough Trucking and Crane Service, Inc. to reimburse the Respondent for all out of pocket costs made prior to trial in relation to valuating the assets of the corporation and hold him harmless therefrom.

11. It is equitable under the facts and circumstances of the case that each party assume and pay their own attorney's fees and costs, except the Petitioner should be responsible for the amount of \$3,798.75 in appraisal organization fees to Randall Gaither, Attorney at Law, and the Respondent is entitled to a Judgment in that amount.

12. The Respondent's business incurred \$8,672.08 in expenses as set forth in Exhibit 8 the Itemization of expenses of Amanda Hansen and/or Kristy B. Clayburn, employees of Brough Trucking and Crane Service Inc. in assembling material and

assisting in Court ordered appraisals and this is a factor in determining that the Petitioner pay for her own attorney's fees and costs. The Respondent prevailed on the execution of the premarital agreement and this is a factor in requiring the Petitioner to pay her own attorney's fees and costs.

13. The costs and expenses of the valuation by the expert, Brad Townsend, were unnecessary in light of the fact that any value that he found was based upon the equipment appraisal by a third party and using the Property Tax Assessment from public records.

14. It is equitable to require the Petitioner, in light of the prenuptial agreement to assume and pay any of the costs of the appraisal, which she requested including the two business appraisals and a Judgement shall be entered requiring the Petitioner to reimburse all of the costs of the Respondent which has paid to Brad Townsend and Ron Liese.

15. It is equitable that each party assume and pay the costs of the real estate appraisals of the Neola, Utah property which was received into evidence and no judgement should be awarded for those costs.

16. It is equitable in light of the Court's consideration of the evidence that each party should be awarded the personal property presently in their possession.

17. The Petitioner should be ordered to assume and pay the debt owed on the 2001 Blue Dodge pickup truck in the amount of \$4,557.14 as of June 10, 2008 to Mountain America Credit Union. (Respondent's Exhibit 14)

18. The Respondent's premarital assets were not co-mingled with marital property, and he maintained them as separate entities, except for the Neola Residence which has no value over and above the premarital and separate assets traced directly into the construction of the residence.

19. The Respondent should be awarded a Judgment in the amount of \$322.50 for costs in relation to the business asset, the computer, taken by the Petitioner.

20. The Respondent should be awarded all costs to be submitted by a post Judgment Affidavit.

**MEMORANDUM IN SUPPORT OF PROPOSED FINDINGS
AND CONCLUSIONS OF LAW**

POINT I

THE NOTARIZED PRENUPTIAL AGREEMENT IS ENFORCEABLE IN THESE PROCEEDINGS.

Utah Code Annotated § 30-8-3(1953) states that "A premarital agreement must be in writing and signed by both parties. It is enforceable without consideration." In this matter there is adequate consideration in that the Petitioner was to be held harmless from business obligations upon divorce. The specific naming of the business and the consideration of the hold harmless from business debts reinforces the enforcement of the of the agreement as to N. J. Trucking Inc., the Glass Store and any personal or family properties of the Respondent.

In *Rudman v. Rudman*, 812 P.2d 73, 161 Utah Adv. Rep. (Ct App 1991) the

Court stated the facts as follows:

The Rudmans were married on April 18, 1981. Both parties had previously been married and divorced. At the time of the marriage, Mrs. Rudman had been receiving \$1,100 per month in permanent alimony from her former husband. Part of Mr. Rudman's premarital property included several movie theaters in three states, two condominiums, and a cabin. Prior to the marriage, Mrs. Rudman's counsel prepared a prenuptial agreement, which the parties signed on April 15, 1981. The agreement stated that each party relinquished all claims and interest to property the other had acquired prior to the marriage and that such property could not be deemed a marital asset following the marriage. The agreement was "not intended and does not apply to any property which is accumulated by the parties either individually or jointly following the marriage of the parties."

The court found that **Mr. Rudman's premarital assets were not commingled with marital property, and that he maintained them as separate entities, including those that were improved through expansion or remodeling.** Thus, under the parties' prenuptial agreement, the loan receivables were properly characterized as premarital assets, as were the condominiums and the cabin.

Mrs. Rudman contends the trial court erred in interpreting the prenuptial agreement. She argues that the agreement specifies that any interest and appreciation accruing to premarital property after the marriage becomes marital property. **Mrs. Rudman also claims the court abused its discretion in failing to find that she contributed labor and/or assets to his premarital property, thus converting it to marital property.** Specifically, she claims the court abused its discretion by failing to find that she assisted Mr. Rudman in the operation of his business by helping to "remodel, clean, vacuum, paint, run errands, make and hang drapes, purchase and prepare food... and work as a ticket taker," thus converting those businesses to marital property. She claims the court abused its discretion in failing to find that she improved and furnished the condominiums and the cabin, resulting in those properties becoming commingled into the marital estate. She also claims the court abused its discretion in finding that loans made to various business entities operating Mr. Rudman's theaters were due to Mr. Rudman alone, rather than to the marital estate. Mrs. Rudman claims that improper exclusion and improper valuation of this property reduced the marital estate by \$472,589.

In *Rudman*, the trial court found that a fair reading of the agreement clearly separated premarital property from property accumulated after the marriage. The trial court also found that, under the agreement, any premarital property, together with any interest or increase, would remain the property of the owner, and any property acquired after the marriage would be marital, "less that amount utilized for its acquisition that can be traced to a point prior to the marriage." The Court of appeals stated:

We find no error in the trial court's legal interpretation of the document. Under the terms of the prenuptial agreement, where each party relinquished all rights to previously acquired property of the other party, he or she would also have no right to any increase in value or additional earnings that might accrue to that property. Likewise, any property acquired by the parties after the marriage would accrue earnings into the marital estate. Additionally, if any amounts used to acquire property during the marriage could be traced to premarital property, those amounts would remain the separate property of that individual. Thus, to preserve the premarital integrity of an asset that has been arguably commingled with property acquired after the marriage, that asset, or its severable part, must be traced to its original source.

In *Ron Case Roofing & Asphalt Paving Co. v. Blomquist*, 773 P.2d 1382 (Utah 1989) the Court indicated that a resort to extrinsic evidence of the parties' intent is permissible only if the contract document appears to express the parties' agreement incompletely or if it is ambiguous in expressing that agreement. Here, the Petitioner's comment that about what Mr. Brough's description of the premarital agreement was is irrelevant.

The Respondent respectfully submits that the premarital agreement should be enforced in these proceedings.

POINT II

THE PETITIONER FAILED TO PROVE ANY CO-MINGLING OF SEPARATE PROPERTY.

In Utah, marital property is ordinarily divided equally between the divorcing spouses and separate property, which may include premarital assets, inheritances, or similar assets, will be awarded to the acquiring spouse. *Olsen v. Olsen*, 169 P.3d 765 (Utah App. 2007) In the recent decision in *Stonehocker v. Stonehocker*, 176 P.3d 476, 2008 UT App 11 (Utah App. 01/10/2008), the Court stated:

The Utah Supreme Court has determined that when one party in a divorce proceeding uses separate property to purchase a marital home, that party is entitled to the equity in the home that resulted from his or her investment. See *Newmeyer v. Newmeyer*, 745 P.2d 1276, 1278 (Utah 1987) (upholding trial court's ruling that the wife should receive credit for her inherited separate property that she invested in the parties' home during the marriage). But [t]he rule that property acquired by gift or inheritance by one spouse should be awarded to that spouse . . . does not apply when the property thus acquired is consumed, such as when a gift or an inheritance of money is used for family purposes; when the property completely loses its identity and is not traceable because it is commingled with other property . . . ; or when the acquiring spouse places title in their joint names in such a manner as to evidence an intent to make it marital property. *Mortensen v. Mortensen*, 760 P.2d 304, 307 (Utah 1988) (citations omitted). The trial court treated the \$81,000 of equity in the Family Home as Wife's separate property to compensate her for the \$90,000 of her inheritance used to improve that asset. Although we are unable to evaluate the overall property settlement because of the lack of findings on value, the recognition of Wife's separate property interest in the improvements to the Family Home was within the trial court's broad discretion.

In *Cox v. Cox* 877 P.2d 1262 (Ut Ct. App 1994), the Court recognized equitable factors

relevant to equitable factors to this proceedings. The Court stated:

Where the marriage is of short duration, where no children were born and where the couple was married later in life, a trial court may properly attempt to restore the parties to their premarital status. See, e.g., *Georgedes v. Georgedes*, 627 P.2d 44, 45 (Utah 1981) (trial court did not abuse discretion to put parties to short second marriage back into sole ownership of premarital properties); *Jespersion v. Jespersen*, 610 P.2d 326, 328 (Utah 1980) (where husband was 73 and wife was 68 at time of marriage, and where marriage was short, trial court did not abuse discretion in awarding premarital home to wife even though she deeded it in joint tenancy to husband).

In addition, a trial court may properly consider other factors relating to distribution of premarital property including the amount and kind of property to be divided; whether the property was acquired before or during the marriage; the source of the property; the health of the parties; the parties' standard of living, respective financial conditions, needs, and earning capacity; the duration of the marriage; the children of the marriage, the parties' ages at time of the marriage and of divorce; [and] what the parties gave up by the marriage. *Hogue v. Hogue*, 831 P.2d 120, 122 (Utah App. 1992) (quoting *Burke v. Burke*, 733 P.2d 133, 135 (Utah 1987)).

In *Cox*, the Wife claimed the trial court erred in finding that appreciation on the house was not due to her remodeling efforts. The Court affirmed the trial court in its memorandum decision which determined that once Husband's and Wife's expenditures were deducted from the \$105,000.00 value of the house, the residence had not materially appreciated.

As to the scope of the agreement, in *Berman v. Berman* 749 P.2d 1271, (Ct App. 1988) the Court of Appeals stated:

Plaintiff argues that the antenuptial agreement only concerned the defendant's business assets, not the house, because the only asset specifically mentioned in the agreement was the billiard business. Defendant argues that the agreement means exactly what it says and exempts "real and personal property," including the

house, from inclusion in the marital estate. The house should have been preserved as the separate property of defendant. We find the trial court erred when it did not include the house in the antenuptial agreement.

At trial, the Petitioner testified that the parties kept their finances "separate". However, in the closing arguments at trial, the attorney for the Petitioner claimed that there was some type of a "marital pot" implying that there had been some co-mingling of funds during the course of the marriage and the court should in some manner limit the premarital contract.

However, an objective review of the evidence will show that each party maintained separate checking accounts and credit cards. For example, the Petitioner indicated that after the marriage she received some separate money from a prior divorce which she placed in her separate checking account and paid personal expenses on her separate credit cards from her personal account. The evidence concerning the fact that she kept hours, received W2 forms and received corporate checks and deposited those checks into her separate checking account prove the opposite of co-mingling of funds by the parties. Mr. Brough sold business assets and property he owned prior to the marriage and placed them in separate checking accounts.

In relation to the evidence of landscaping and doing some work on the Neola residence, see *Johnson v. Johnson*, 2007 UT App 329 (Utah App.2007), the court stated:

Husband next argues that the trial court misunderstood or misapplied the law in determining that the appreciation on the real property was Wife's separate property, as opposed to marital property subject to an equal division among the parties. Husband does not dispute that the real property

was purchased from Wife's premarital funds and, thus, was initially Wife's separate property. Nor does he dispute that any appreciation on Wife's separate property would also be considered Wife's separate property. Husband appears to argue, however, that events within the marriage converted this separate property into marital property.

Premarital property loses its separate identity and becomes a part of the marital estate if "(1) the other spouse has by his or her efforts or expense contributed to the enhancement, maintenance, or protection of that property, thereby acquiring an equitable interest in it, or (2) the property has been consumed or its identity lost through commingling or exchanges or where the acquiring spouse has made a gift of an interest therein to the other spouse." *Oliekan v. Oliekan*, 2006 UT App 405, ¶20, 147 P.3d 464 (quoting *Mortensen v. Mortensen*, 760 P.2d 304, 308 (Utah 1988)).

We are not persuaded by Husband's arguments that his purported efforts--including doing some tile work in the home and "supervising" landscaping and home theater installation--were sufficient to obtain an equitable interest in the home. Instead, we agree with the trial court that "[Wife] kept the asset separate" and that the facts do not support a finding that "[Husband] made any contribution to the house" other than possibly a monetary contribution toward landscaping and tile--a portion of the one deposit made into Wife's separate account--for which the court ordered reimbursement to Husband.

The Petitioner did not prove the separate property has been consumed or its identity lost through commingling or exchanges.

POINT III

EACH PARTY SHOULD ASSUME AND PAY THEIR OWN ATTORNEYS FEES AND THE RESPONDENT SHOULD BE ORDERED TO PAY AND REIMBURSE THE COSTS OF THE EXPERTS.

From the commencement of this action, the Respondent has been faced with an

expensive appraisal process. When the report was finished right before trial, the expert witness fees totaled approximately \$17,000.00. These pretrial costs were incurred because the Petitioner choose litigation to disregard her signed agreement and claimed a substantial business interest in the business, going to far as to obtain an TRO as to the business.

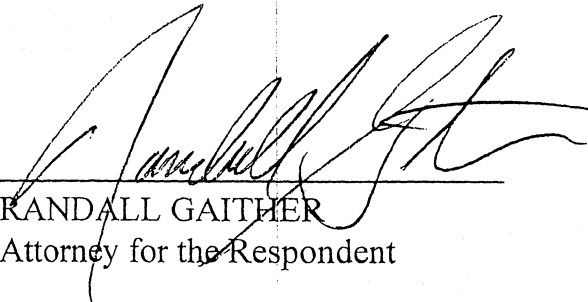
At trial, the expert Brad Townsend indicated that there was not sufficient grounds to determine any enhanced value of the corporation during the marriage. The Petitioner who was familiar with the one man business, chose to litigate at great cost to attempt obtain an interest subject to that agreement when she should have known there was no value to distribute. A graphic example of this point is the fact that when Mr. Brough broke his foot the business had to borrow funds on the Neola residence.

Since the Petitioner drastically increased the costs and expenses of this legal action by making a claim for a substantial portion of the Respondent's business and business assets. The Petitioner should be pay the costs. Concerning the administration of justice in all divorce cases, it is not sound policy to allow with a party that signed a premarital agreement to require the other spouse to advance substantial costs and expenses to the allow the spouse to attempt to "swing for the fence". The Respondent prevailed on the business issues and the Petitioner should pay for the expensive litigation costs of her own experts.

The Respondent respectfully submits that in this specific situation the factors

require the Petitioner pay her own attorneys fees as well as the costs of the attempt to prove a business interest. The Court should take into account the fact that Mr. Brough was required to pay extra business costs, lose of time to coordinate the appraisal, expend employee expenses, accounting fees and substantial attorneys fees. These costs accrued up until the expert announced his decision on the day before trial that there was no goodwill, no enhanced value or value over the return of Mr. Brough for his services and expertise. In light of the valid prenuptial agreement it is equitable that the Petitioner reimburse the Respondent for any attorney's fees and costs, including mailing costs, incurred in preparing and organizing documents and information delivered to the experts for appraisals of the business of \$3,798.75. The Respondent should be awarded of all costs of this action.

DATED this 8th day of August, 2008.



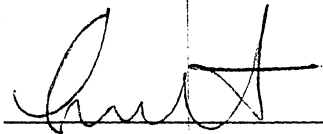
RANDALL GAITHER
Attorney for the Respondent

FAX/MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing RESPONDENT'S
PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND
MEMORANDUM was faxed and mailed to:

CLARK B. ALLRED
ALLRED & MCCLELLAN, P.C.
72 NORTH 300 EAST
ROOSEVELT, UTAH 84066
FAX: (435) 722-3928

DATED this 8 day of August, 2008.



EIGHTH DISTRICT CT-ROOSEVELT
DUCHESNE COUNTY, STATE OF UTAH

KATHRYN C BROUGH, : MINUTES
Petitioner, : BENCH TRIAL
:
:
vs. : Case No: 054000084 DA
:
RICHARD JAMES BROUGH, : Judge: JOHN R. ANDERSON
Respondent. : Date: July 9, 2008

Clerk: brigittt

PRESENT

Petitioner's Attorney: CLARK B ALLRED
Petitioner(s): KATHRYN C BROUGH
Attorney for the Respondent: RANDALL T GAITHER
Respondent(s): RICHARD JAMES BROUGH
Audio
Tape Number: cd138roos Tape Count: 9:05:04

TRIAL

TAPE: cd138roos COUNT: 9:05:04

In chambers: Counsel state their witness and exhibit objections.
One witness, Brad Townsend, will testify by phone at 1:30 today.

COUNT: 9:20

Open Court: opening statements are made. Mr. Allred offers exhibit 1 and 3, these are received. Jake Welborn and Jared Jensen are sworn in and testify. Kathy Brough testifies. Respondent's exhibit 1 is offered and received. Plaintiff's exhibits 27, 23, 6, 7, 8, 9, 10, 11, 12, 13, 20, 21, 22, 14, 15, 16, 18, 17, 24, 25, 2, and 5 are offered and received. Mr. Gaither gives cross examination. Respondent's exhibits 6, 10, 15, 18, 22, 26, and 32 are offered and received. Witnesses are excused.

COUNT: 1:27

in chambers. Brad Townsend is present by phone. Mr. Allred and Mr. Gaither are present. Mr. Townsend is sworn in and testifies.

COUNT: 2:10

back in open court: Mr. Allred proffers affidavit for attorney's

Case No: 054000084

Date: Jul 09, 2008

fees. Plaintiff's exhibit 4 is offered and received. Plaintiff rests.

COUNT: 2:11:4

Mr. Gaither calls Richard James Brough (Jim) to the stand. Respondent's exhibits 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19 is withdrawn, 20 through 25 are received. Exhibits 28, with objection, 29, 30, 31 through 40, 41 withdrawn.

Mr. Allred gives cross examination. Exhibit 27, 28, and 29 are offered and received. Kathy Brough is called back to the stand for rebuttal. 4:56:25; closing arguments are given. The Court will need to read some case law and then will make a written

ruling. Each attorney is to prepare a findings and conclusion and decree and submit these to the Court. The Court hears jurisdiction and grounds and grants the divorce. Mr. Gaither is to prepare the divorce decree. Counsel is to have findings and conclusions in the mail by August 8th.

Trial End: 5:31:45

000201

000315

CLARK B ALLRED - 0055
CLARK A. McCLELLAN - 6113
ALLRED & McCLELLAN, P.C.
Attorneys for Petitioner
72 North 300 East (123-14)
Roosevelt, Utah 84066
Telephone: (435) 722-3928

SEP 11 2008
UTAH
CLERK OF DISTRICT COURT
ROOSEVELT DEPARTMENT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY
ROOSEVELT DEPARTMENT, STATE OF UTAH

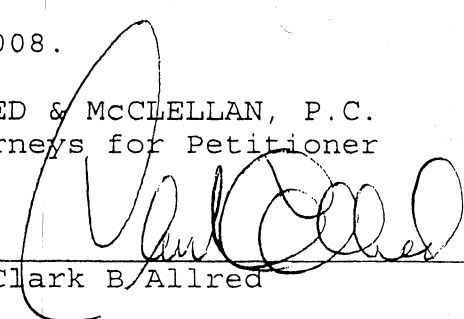
KATHRYN C. BROUGH,)	
	)	NOTICE OF ENTRY OF
Petitioner,	)	DECREE OF DIVORCE
)	
vs.)	
)	
RICHARD JAMES BROUGH,	)	Civil No. 054000084 DA
)	
Respondent.	)	Judge John R. Anderson

Please take notice that the Court entered its Findings of Fact and Conclusions of Law and Decree of Divorce in the above captioned matter on September 4, 2008.

DATED this 4th day of September, 2008.

ALLRED & McCLELLAN, P.C.
Attorneys for Petitioner

By:


Clark B. Allred

MAILING CERTIFICATE

I, Cheree Brotherson, am employed by the office of ALLRED & McCLELLAN, P. C. attorneys for Petitioner herein and hereby certify that I served the attached NOTICE OF ENTRY OF DECREE OF DIVORCE on Respondent by placing a true and correct copy thereon in an envelope addressed to:

RANDALL GAITHER
ATTORNEY AT LAW
159 WEST 300 SOUTH BROADWAY #105
SALT LAKE CITY, UT 84101

and deposited the same, sealed, with first class postage prepaid thereon, in the United States mail at Roosevelt, Utah, on the 4th day of September, 2008.


CHERE BROTHERSON

EIGHTH DISTRICT CT-ROOSEVELT
DUCHESNE COUNTY, STATE OF UTAH

KATHRYN C BROUGH, : MINUTES
Petitioner, : MOTIONS HEARING
:
:
vs. : Case No: 054000084 DA
:
RICHARD JAMES BROUGH, : Judge: JOHN R. ANDERSON
Respondent. : Date: September 25, 2008

Clerk: brigittt

PRESENT

Petitioner's Attorney: CLARK B ALLRED
Petitioner(s): KATHRYN C BROUGH
Attorney for the Respondent: RANDALL T GAITHER
Respondent(s): RICHARD JAMES BROUGH
Audio
Tape Number: cd141roos Tape Count: 3:21:23

HEARING

TAPE: cd141roos COUNT: 3:21:23

The Court reviews the file with counsel. Mr. Gaither asks that the divorce decree be set aside and enter a bifurcated decree of divorce. Mr. Gaither and Mr. Allred both address the issue of the findings and decree that have been entered.

The Court denies the motion to set aside the findings and decree, but the Court will sign the divorce decree, to be final upon entry into the record. Exhibit 1 is offered and received. The Court denies Mr. Gaithers motions. The motion to stay the proposed new judgment and order is moot. Mr. Allred is to prepare the order.

000204

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FILED
DISTRICT COURT
DUCHESE COUNTY, UTAH
SEP 25 2008

BY JOANNE McKEE, CLERK
721 DEPUTY

Case No. 054000084

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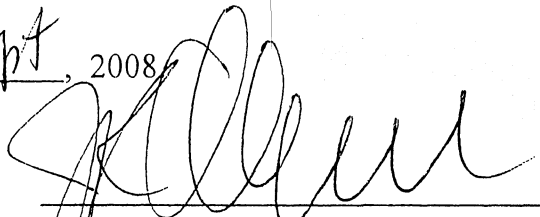
parties which the parties are unable to reconcile.

CONCLUSIONS OF LAW

3. The parties are bona fid residence of Duchesne County, State of Utah and the Court has legal grounds to enter a Decree of Divorce.

4. All other issues shall be reserved.

DATED this 25 day of sept, 2008



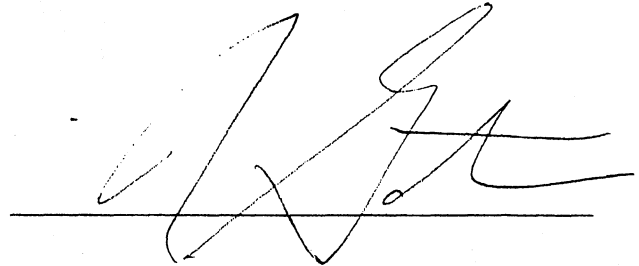
JOHN R. ANDERSON
DISTRICT COURT JUDGE

FAX/MAIL CERTIFICATE

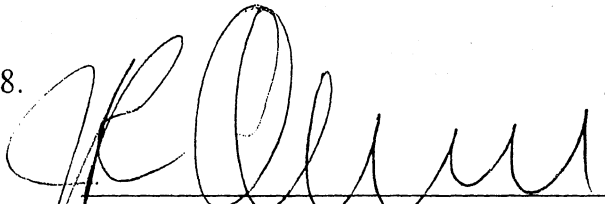
I hereby certify that a true and correct copy of the foregoing FINDINGS OF
FACT AND CONCLUSIONS OF LAW was faxed/mailed to:

CLARK B. ALLRED
ALLRED & MCCLELLAN, P.C.
72 NORTH 300 EAST
ROOSEVELT, UTAH 84066
FAX: (435)722-3928

DATED this 12 day of July, 2008.

A handwritten signature in dark ink, appearing to be "Clark B. Allred", is written over a horizontal line.

DATED this 25 day of ^{Sept.} ~~July~~, 2008.

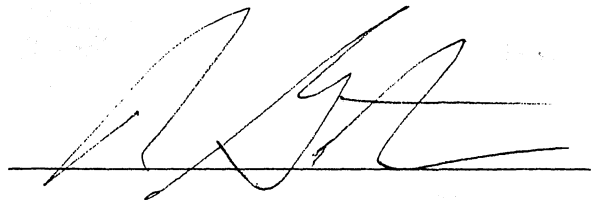

JUDGE JOHN R. ANDERSON
DISTRICT COURT JUDGE

FAX/MAIL CERTIFICATE

I hereby certify that a true and correct copy of the foregoing DECREE OF
DIVORCE was faxed/mailed to:

CLARK B. ALLRED
ALLRED & MCCLELLAN, P.C.
72 NORTH 300 EAST
ROOSEVELT, UTAH 84066
FAX: (435)722-3928

DATED this 14 day of July, 2008.



CLARK B ALLRED - 0055
CLARK A. McCLELLAN - 6113
ALLRED & McCLELLAN, P.C.
Attorneys for Petitioner
72 North 300 East (123-14)
Roosevelt, Utah 84066
Telephone: (435) 722-3928

FILED
DISTRICT COURT
DUCHESNE COUNTY
OCT 14 2008

BY JOANNE MCKEE, CLERK
DEPT. OF CORRECTIONS

ORIGINAL

IN THE EIGHTH JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY

ROOSEVELT DEPARTMENT, STATE OF UTAH

KATHRYN C. BROUGH,	)	ORDER
	)	(September 25, 2008 hearing)
Petitioner,)	
)	
vs.)	
)	
RICHARD JAMES BROUGH,	)	Civil No. 054000084 DA
)	
Respondent.	)	Judge John R. Anderson

The above captioned matter came before the Court for argument on the Respondent's Motion for New Trial, Objections to Findings of Fact and Conclusions of Law, Motion for Relief from Judgment and Order, and Motion to Alter or Amend Judgment.

Petitioner was present with her attorney, Clark Allred. Respondent was present with his attorney Randall Gaither. Both parties have submitted memoranda in support of their positions. Oral argument was received from counsel. The Court, on the record then stated its reasons and analysis regarding the signing of the findings of fact and conclusions of law and the issues raised in

000210

000519

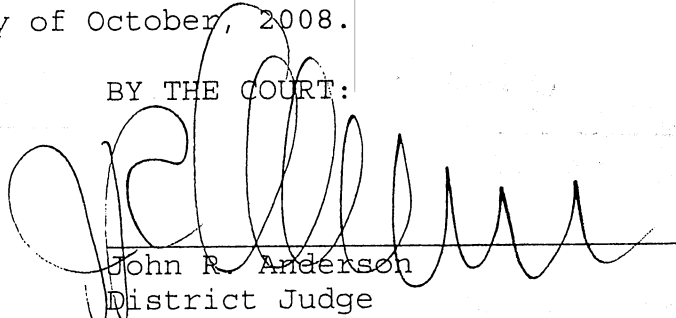
the motions and then denied the motions. The parties further agreed that the objection to supplemental fees was based on the same reasons as the above listed motions and should also be denied. The court signed the bifurcated order divorcing the parties. The Respondent following the court's ruling filed his notice of appeal.

Based thereon the Court rules as follows:

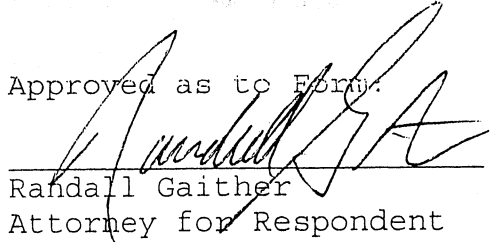
1. The Respondent's Motion for New Trial is denied.
2. The Respondent's Objection to Findings of Fact and Conclusions of Law is denied.
3. The Respondent's Motion for Relief from Judgment and Order is denied.
4. The Respondent's Motion to Alter or Amend Judgment is denied.
5. The Respondent's Objections to Supplemental Request for Attorney's Fees is denied and Petitioner is awarded the fees set forth in her supplemental affidavit.
6. Respondent is given 21 days from September 25, 2008 to make the election provided for in paragraph 1 of the Decree of Divorce signed August 28, 2008 and 90 days from September 25, 2008 to pay the monies ordered in paragraph 1 or 2 of the Decree of Divorce signed August 28, 2008.

DATED this 9 day of October, 2008.

BY THE COURT:


John R. Anderson
District Judge

Approved as to Form:


Randall Gaither
Attorney for Respondent

RECEIVED

OCT 14 2004

8th District Court

RANDALL GAITHER #1141
Attorney for the Respondent
159 West 300 South Broadway #105
Salt Lake City, Utah 84101
Telephone: (801) 531-1990

OCT 14 2008

JOANNE McKEE, OLINA
BY

IN THE EIGHT DISTRICT COURT IN AND FOR DUCHESNE COUNTY
ROOSEVELT DEPARTMENT, STATE OF UTAH

KATHRYN C. BROUGH,

Petitioner,

VS.

RICHARD JAMES BROUGH,

Respondent.

NOTICE OF ELECTION

Judge: JOHN R. ANDERSON

Case No. 054000084

TO THE CLERK FOR JUDGE ANDERSON AND THE ATTORNEY FOR THE
PETITIONER:

Subject to all pending Motions, the Respondent hereby elects to pay to the
Petitioner the amount necessary to be awarded the business and residence within ninety
(90) days of the entry of the Decree as set forth in Paragraph One of the Decree entered
on September 4, 2008 AS MODIFIED ON September 25, 2008

DATED this _____ day of October, 2008.

Randall Gaither

RANDALL GAITHER
Attorney for the Respondent

DELIVERY CERTIFICATE

I hereby certify that a true and correct copy of the foregoing NOTICE OF
ELECTION was emailed, faxed and delivered to:

CLARK B. ALLRED
Allred & McClellan, P.C.
72 North 300 East
Roosevelt, Utah 84066
Fax: (435)722-3928

Clark B. Allred

DATED this 13th day of September, 2008.

1 THE COURT: Fourteen will be received.

2 (Respondent's Exhibit 15 received)

3 Q (BY MR. GAITHER) Now the next one is 15 and that
4 would be the last one in the Court's courtesy folder and it's
5 a big thick exhibit. Looking at the first page of Exhibit
6 15, do you know who prepared that?

7 A My daughters, Christie and Amanda.

8 Q And previously we've seen some billing and have
9 they billed for the time and effort for this?

10 A Yes, sir.

11 Q Do you know where they obtained the information
12 about where the costs - what does this document relate to?

13 A Mostly the cost of the house. I think most
14 everything on here is costs of building the house, putting
15 everything together and getting ready to move into it.

16 MR. ALLRED: Your Honor, counsel - or the witness
17 indicated he didn't prepare this. We don't have any
18 objection to it being received and we've gone through it and
19 believe that it accurately shows (inaudible) paid in the
20 business.

21 MR. GAITHER: All right, thank you.

22 Q (BY MR. GAITHER) So, there is a folder that
23 matches all these things up back in your -

24 A Yes, sir.

25 Q All right, and let's have you go to the last page

1 as far as Brough Trucking and the checks, what is the total
2 amount there?

3 THE COURT: Where are you at?

4 MR. GAITHER: On Page 3, three pages into the
5 exhibit.

6 Q (BY MR. GAITHER) What is the total amount there?
7 A Looks like \$166,373.89.

8 Q All right, and then the next page, N.J. Trucking,
9 is there a separate account for N.J. Trucking?

10 A Yes, sir.

11 Q And what is the amount from N.J. Trucking?
12 A Looks like \$86,559.12.

13 Q All right. Now the last page of the summary is to
14 Jim's personal.

15 A That's my personal checkbook.

16 Q And where was that account at?
17 A The amount?

18 Q No, the account, where was the account at?
19 A Mountain America.

20 Q And was Kathy a signator on your account?
21 A No.

22 Q And at that point in time did she have a Mountain
23 American Account of her own?

24 A Yes.

25 Q These are checks that you paid out of your account;

1 is that correct?

2 A Yes sir.

3 Q And what is the total for that amount?

4 A \$73,318.10.

5 Q Okay, thank you. Now just a couple of other items.

6 If you could just turn right before 15(c), there's about four

7 or five pages of - if I could just assist you real quick and

8 (inaudible)

9 And Your Honor, these are documents that we

10 delivered at a later time.

11 MR. ALLRED: Oh, that's 15(c)?

12 MR. GAITHER: 15(c) yeah. There should be a letter

13 dated (inaudible). Thank you.

14 Q (BY MR. GAITHER) Now, in relation to your personal

15 account, your checking account, have you also, in addition to

16 doing that determined where the deposits were made into the

17 checking accounts where these expenditures came from?

18 A Yes, sir.

19 Q And going to that - it looks like there's a

20 document 4-12-2000, do you see that?

21 A That's an N.J. Truckin' deposit slip showing

22 Duchesne land which is Steed's over in Duchesne bought the

23 shop and yard and made a payment of \$30,000 that was

24 deposited in N.J. Trucking.

25 Q And then the next page, it looks like Richard J.

1 Brough, 5-1-02?

2 A That's a deposit that went into my personal - no,
3 this went into Wells Fargo, looks like my personal Wells
4 Fargo checking account and her handwriting says sale of Jim's
5 house, \$10,810.82.

6 Q And her, who are you referring to?

7 A Kathy.

8 Q So where did you find this at?

9 A In the deposit slip books in the office.

10 Q Okay. And let's go over to the next page, N.J.
11 Trucking, 5-1-2000.

12 A That's from Duchesne land, the Steed's over in
13 Duchesne \$54,000 went into N.J. Trucking as a deposit slip.

14 Q And whose handwriting is that?

15 A On the sticky is mine but on the checkstub is hers.

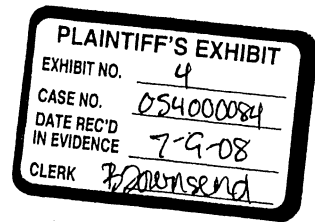
16 Q Okay, thank you. It looks like there's kind of a
17 poor copy of something that says Mountain America, what's
18 that referring to?

19 A \$50,000 went into a money market account, 5-17-
20 2001. This would have been the sale of some used oil field
21 equipment I had in the yard.

22 Q And had you owned that -

23 A For about 15 years.

24 Q Okay. Next page, N.J. Trucking, there's one there
25 for it says Chotah.



CLARK B ALLRED - 0055
CLARK A. McCLELLAN - 6113
ALLRED & McCLELLAN, P.C.
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Telephone: (435) 722-3928

IN THE EIGHTH JUDICIAL DISTRICT COURT OF DUCHESNE COUNTY
STATE OF UTAH, ROOSEVELT DEPARTMENT

KATHRYN C. BROUGH,	)	AFFIDAVIT OF ATTORNEY'S
	)	FEES
Petitioner,)	
)	
vs.)	
)	
RICHARD JAMES BROUGH,	)	Civil No. 054000084 DA
)	
Respondent.	)	Judge John R. Anderson

COMES NOW, Clark B Allred, being first duly sworn, deposes and states that:

1. I am the attorney for the Petitioner in the above entitled action. I work for the law firm of Allred & McClellan, P.C.

2. The law firm was retained by the Petitioner in the above entitled action pursuant to the terms of a written fee agreement.

3. I am duly licensed to practice law in the State of Utah. My bar number is 0055.

4. From August 22, 2005 through July 2, 2008, Allred & McClellan, P.C. expended \$15,391.53 in legal services and costs to represent the Petitioner in this case.

5. The fees and costs incurred by the firm of Allred & McClellan, P.C., were for the following:

Aug. 22, 2005	Office visit to discuss filing for a divorce.	.60	\$99.00
Aug. 23, 2005	Filing Fee - Petition for Divorce		\$97.00
Aug. 23, 2005	Preparation of Motion for Order to Show Cause, Order to Show Cause, Affidavit in Support of Order to Show Cause, Petition for Divorce, Summons, correspondence with Eighth District Court and preparation of Court Cover Sheet	2.6	\$117.00
Aug. 29, 2005	Work on the Petition and the order to show cause documents	.50	\$82.50
Aug. 29, 2005	Revising and editing Summons, Petition for Divorce, Motion for Order to Show Cause, Order to Show Cause and Affidavit in Support of Order to Show Cause	.40	\$18.00
Aug. 30, 2005	Correspondence with and telephone call to Service Agent, correspondence with client and waiting at the Courthouse for a date for the Order to Show Cause.	1.0	\$45.00
Aug. 31, 2005	Preparation of Financial Declaration.	.40	\$18.00
Sept. 6, 2005	Correspondence with client	.20	\$9.00
Sept. 8, 2005	Office visit and preparing for OTSC hearing	.60	\$99.00
Sept. 9, 2005	Revising and editing Financial Declaration.	.30	\$13.50
Sept. 14, 2005	Service Fee		\$37.00
Sept. 15, 2005	Preparation of exhibits for hearing.	.40	\$18.00

Sept. 27, 2005	Telephone call with Eighth District Court, preparation of Default Certificate and Notice of Hearing	.80	\$36.00
Sept. 29, 2005	Correspondence with client	.20	\$9.00
Oct. 13, 2005	Preparing for the Court Hearing, Court Appearance on the Order to Show Cause and preparing the orders.	3.5	\$577.50
Oct. 13, 2005	Preparation of Exhibits for Order to Show Cause.	.20	\$9.00
Oct. 14, 2005	Researching cases and materials on prenuptial agreements.	2.3	\$184.00
Oct. 14, 2005	Preparation of Scheduling Order and Order on Order to Show Cause.	1.2	\$54.00
Oct. 14, 2005	Preparation of Petitioner's First Set of Interrogatories and Request for Production of Documents.	1.0	\$45.00
Oct. 16, 2005	Correspondence with Mary Ann Hansen and client	.60	\$27.00
Oct. 16, 2005	Preparation of Order and interrogatories for filing with the opposing counsel.	.20	\$9.00
Oct. 17, 2005	Work on the order, scheduling order and the discovery	.80	\$132.00
Oct. 17, 2005	Revising and editing Interrogatories, scheduling order and order on order to show cause	.30	\$13.50
Oct. 17, 2005	Preparation of Certificate of Service.	.30	\$45.00
Oct. 20, 2005	Preparing summary for Clark Allred on prenuptial agreement issues.	.70	\$56.00

Oct. 31, 2005	Meeting with client.	.10	\$4.50
Nov. 21, 2005	Preparation of correspondence with opposing counsel.	.40	\$18.00
Dec. 14, 2005	Preparation of Answers to Interrogatories.	3.0	\$135.00
Dec. 15, 2005	Work on the response to discovery	.50	\$82.50
Dec. 19, 2005	Preparation of Certificate of Service and revising and editing of Answers to Interrogatories	.30	\$13.50
Dec. 22, 2005	Correspondence with Mary Ann Hansen	.30	\$13.50
Jan. 16, 2006	Preparation of Motion to Compel Discovery.	.50	\$22.50
Jan. 16, 2006	Revising and editing Motion to Compel Discovery and correspondence with client.	.40	\$18.00
Jan. 19, 2006	Correspondence with client including all enclosures	.40	\$18.00
Jan. 20, 2006	Send Petitioner's Answers to Respondent's First Set of Interrogatories and Request for Production of Documents to opposing counsel; transmittal of same to client.	.20	\$9.00
Jan. 20, 2006	Going over the information received thru discovery	1.0	\$175.00
Jan. 23, 2006	Discussions with client and letter to adverse attorney about the documents provided in discovery.	.50	\$87.50
Jan. 23, 2006	Correspondence with Mary Hansen	.60	\$27.00
Jan. 24, 2006	Preparation of Corporate Information Order Form	.30	\$13.50

Feb. 16, 2006	Discussions with adverse attorney about returning the property, the discovery and alimony.	.40	\$70.00
Feb. 16, 2006	Meeting with client	.10	\$5.00
Feb. 27, 2006	Going over documents received thru discovery	1.0	\$175.00
Feb. 27, 2006	Telephone call with client.	.10	\$4.50
Mar. 6, 2006	Meeting with client to go over responses to discovery, arranging for an appraiser, calls to obtain closing documents and arranging for a mediator.	1.0	\$175.00
Mar. 7, 2006	Correspondence with Michael Barneck.	.60	\$30.00
Mar. 15, 2006	Zions Bank - Copies.		\$15.70
May 4, 2006	Telephone calls to set up the mediation.	.30	\$52.50
May 8, 2006	Meeting with client and working on a mediation brief and preparing for mediation	1.5	\$262.50
May 22, 2006	Correspondence with Craig Snyder and client. Revising and editing Mediation Brief.	.80	\$40.00
June 1, 2006	Meeting with client and preparing for the mediation hearing.	2.0	\$350.00
June 9, 2006	Mediation of the case.	5.5	\$962.50
June 12, 2006	Followup on mediation, calls on appraising the business and call to appraiser of the home.	.40	\$70.00
June 19, 2006	Work on motion and memorandum to seek to have the property appraised.	.60	\$105.00

June 19, 2006	Preparation of Motion to Order Appraisals and Memorandum in Support of Motion to Order Appraisals.	1.5	\$67.50
June 29, 2006	Discussion with new attorney on appraisals and settlement and providing copies to new attorney	.40	\$70.00
July 5, 2006	Preparation of Notice to Submit	.40	\$20.00
July 10, 2006	Discussion with the adverse attorney and reviewing the response to the motion	.40	\$70.00
July 12, 2006	Correspondence with client	.20	\$10.00
July 13, 2006	Work on the reply memorandum	.50	\$87.50
July 14, 2006	Preparation of Reply Memorandum and Affidavit.	1.0	\$50.00
July 17, 2006	Work on the reply memorandum on the appraiser and request for ruling.	.50	\$87.50
July 18, 2006	Revising and editing Affidavit and meeting with client.	.30	\$15.00
Aug. 2, 2006	Correspondence with client	.20	\$10.00
Aug. 7, 2006	Correspondence with client	.20	\$10.00
Aug. 10, 2006	Work on the order for appraisal and discussions with appraiser.	.50	\$87.50
Aug. 10, 2006	Preparation of Order and correspondence with client	.50	\$25.00
Aug. 14, 2006	Correspondence with client	.20	\$10.00
Aug. 17, 2006	Meeting with client to prepare for deposition.	.50	\$87.50
Aug. 18, 2006	Attending the deposition of Kathy and calls trying to arrange for the appraisal.	2.5	\$437.50

Aug. 23, 2006	Correspondence with Brad Townsend and correspondence with client.	.70	\$35.00
Aug. 23, 2006	Revising and editing correspondence with Brad Townsend and preparation of enclosures	.30	\$15.00
Aug. 28, 2006	Preparing response to objection to order.	.40	\$70.00
Aug. 28, 2006	Correspondence with client.	.20	\$10.00
Aug. 28, 2006	Preparation of Response to Objection.	.40	\$20.00
Aug. 29, 2006	Correspondence with client.	.10	\$10.00
Aug. 31, 2006	Meeting with client to discuss recent developments.	.50	\$87.50
Sept. 14, 2006	Deposition copy charge		\$133.40
Sept. 21, 2006	Correspondence with client	.20	\$10.00
Sept. 28, 2006	Correspondence with client	.20	\$10.00
Oct. 5, 2006	Calls to appraiser and to adverse attorney about Jim's refusal to cooperate with appraisers.	.40	\$70.00
Oct. 16, 2006	Transcribe and send letter to Mr. Heugley; transmittal letter to client with copy of same.	.50	\$25.00
Oct. 30, 2006	Reviewing the settlement letter and calls with adverse attorney to set up the appraisal of the home.	.40	\$70.00
Nov. 22, 2006	Reviewing the appraisal and responding to the settlement offer.	1.0	\$175.00
Nov. 27, 2006	Revising and editing correspondence with Dusten Heugley. Telephone call and meeting with client.	.40	\$20.00

Dec. 11, 2006	Correspondence with client	.20	\$10.00
Dec. 28, 2006	Correspondence with Dusten Heugley.	.30	\$15.00
Jan. 16, 2007	Preparation of Motion for Order to Show Cause, Order to Show Cause, and Affidavit in Support of Order to Show Cause.	.80	\$40.00
Jan. 18, 2007	Revising and editing Motion for Order to Show Cause and Order to Show Cause.	.20	\$10.00
Jan. 18, 2007	Correspondence with client	.20	\$10.00
Feb. 1, 2007	Correspondence with Mr. Heugley	.50	\$25.00
Feb. 12, 2007	Work on a motion to continue order to show cause hearing.	.50	\$87.50
Feb. 12, 2007	Preparation of Motion to Continue and Order for Continuance.	.60	\$30.00
Feb. 12, 2007	Correspondence with Dusten Heugly and client.	.40	\$20.00
Mar. 15, 2007	Work on the affidavit and memorandum opposing the motion to release business property.	.50	\$87.50
Mar. 15, 2007	Correspondence with client.	.20	\$10.00
Mar. 15, 2007	Preparation of Affidavit and Memorandum in Opposition to Motion of Return of Property.	1.0	\$50.00
Mar. 20, 2007	Correspondence with client	.20	\$10.00
Mar. 27, 2007	Preparation of Supplemental Memorandum in Opposition to Motion for Return of Business Property.	.40	\$20.00
Mar. 29, 2007	Revising and editing Supplemental Memorandum in Opposition. Correspondence with client.	.40	\$20.00

Apr. 16, 2007	Correspondence with client	.20	\$10.00
Apr. 16, 2007	Discussions on providing the computer for inspection and email to appraiser on status.	.50	\$87.50
Apr. 23, 2007	Correspondence with Dusten Heugley and telephone call with client.	.30	\$15.00
Apr. 24, 2007	Preparation of Subpoena Duces Tecum to Mountain America and Zions First National Bank.	.50	\$25.00
Apr. 24, 2007	Correspondence with client	.20	\$10.00
Apr. 26, 2007	Preparing a request for the documents requested by subpoena	.30	\$52.50
Apr. 30, 2007	Correspondence with Mr. Heugley	.30	\$15.00
May 17, 2007	Telephone call with Dustin Heugly	.10	\$5.00
May 3, 2005	Preparation of Motion and Order for Continuance.	.40	\$18.00
June 4, 2007	Meeting and arranging with person to examine the computer, discussion with client.	.40	\$70.00
June 18, 2007	Copies		\$21.93
July 11, 2007	Correspondence with Dustin Heugly	.30	\$15.00
Aug. 13, 2007	Finalize and file Objection to Order to Show Cause; transmittal to client with copies of same.	.20	\$10.00
Aug. 21, 2007	Efforts to contact adverse attorney to complete the appraisal.	.30	\$52.50
Aug. 23, 2007	Correspondence with Dustin Heugley	.40	\$20.00

Aug. 30, 2007	Discussion with client and appraiser, attending court on Order to Show Cause, letter to adverse counsel on payment.	.50	\$87.50
Aug. 30, 2007	Correspondence with Dusten Heugley	.30	\$15.00
Sept. 5, 2007	Correspondence with client	.20	\$10.00
Sept. 17, 2007	Meeting with client and potential witness on assets being hidden	.50	\$87.50
Sept. 18, 2007	Correspondence with Randall Gaither and Mr. Townsend.	.90	\$45.00
Sept. 24, 2007	Correspondence with Randall Gaither; transmittal to client with same.	.40	\$20.00
Oct. 16, 2007	Correspondence with client	.20	\$10.00
Oct. 22, 2007	Going over the letter and determining what we needed and letter to adverse attorney.	.50	\$87.50
Oct. 24, 2007	Correspondence with Randall Gaither.	.40	\$20.00
Nov. 8, 2007	Correspondence with client	.20	\$10.00
Nov. 15, 2007	Preparing a response to the petition to modify.	.50	\$87.50
Nov. 15, 2007	Preparation of Memorandum in Opposition to Motion to Bifurcate	.40	\$20.00
Nov. 19, 2007	Revising and editing Memorandum in Opposition to Motion to Bifurcate.	.20	\$10.00
Nov. 20, 2007	Transmittal letter to client with copy of Memorandum in Opposition to Motion to Bifurcate	.20	\$10.00
Dec. 3, 2007	Correspondence with client	.20	\$10.00

Dec. 27, 2007	Correspondence with Randall Gaither.	.30	\$15.00
Dec. 31, 2007	Telephone call with and correspondence to client.	.20	\$10.00
Jan. 17, 2008	Correspondence with client	.20	\$10.00
Jan. 31, 2008	Correspondence with client	.20	\$10.00
Feb. 6, 2008	Correspondence with client	.20	\$10.00
Feb. 7, 2008	Reviewing documents received and preparing for pre trial conference	1.0	\$175.00
Feb. 14, 2008	Court appearance for scheduling conference	.60	\$105.00
Feb. 21, 2008	Work on obtaining information on forgery issues, going over the property lists provided by counsel	.50	\$87.50
Feb. 25, 2008	Providing information to the appraiser on forgery claims	.50	\$87.50
Feb. 25, 2008	Telephone call with and correspondence to client.	.20	\$10.00
Feb. 26, 2008	Correspondence with client	.20	\$10.00
Feb. 27, 2008	Correspondence with Brad Townsend	.30	\$15.00
Mar. 6, 2008	Reviewing the police Reports	.30	\$52.50
Mar. 6, 2008	Correspondence with Brad Townsend	.20	\$10.00
Apr. 10, 2008	Attempts to contact the appraiser of the business, calls to Mr. Gaither, working on stipulation and beginning work on the witness and exhibit list.	1.5	\$262.50

Apr. 14, 2008	Revising and editing Witness List. Preparation of Notice of Deposition. Telephone call with Court Reporter and correspondence with client.	.90	\$45.00
Apr. 14, 2008	Preparing for depositions and for trial and setting up the times to meet with the Appraiser.	2.0	\$350.00
Apr. 15, 2008	Correspondence with Court Reporter and client.	.50	\$25.00
Apr. 17, 2008	Correspondence with client	.20	\$10.00
Apr. 18, 2008	Travel to Duchesne Court and researching Jim's prior divorce file for asset information.	1.3	\$130.00
Apr. 21, 2008	Researching Jim's property interests at Duchesne recorder's office and online Uintah County records.	1.3	\$130.00
Apr. 29, 2008	Correspondence with client	.20	\$10.00
Apr. 30, 2008	Researching whether they can take a second deposition.	.30	\$52.50
May 1, 2008	Correspondence with Randall Gaither. Revising Stipulation and Witness and Exhibit Lists.	.20	\$10.00
May 5, 2008	Meeting with the appraiser and going to the various sites, providing information requested by appraiser, preparing for the deposition of Mr. Brough	5.0	\$875.00
May 5, 2008	Telephone call with client and preparation of delivery documents to Mr. Townsend	1.0	\$50.00
May 6, 2008	Delivery expense		\$6.04

May 6, 2008	Correspondence with Brad Townsend and delivery of documents for mailing.	.50	\$25.00
May 6, 2008	Discussion with the appraiser and working on a document request.	.50	\$87.50
May 7, 2008	Revising and editing Request for Production of Documents. Certificate of Service.	.30	\$15.00
May 8, 2008	Research property values	.30	\$15.00
May 8, 2008	Correspondence with client	.20	\$10.00
May 15, 2008	Responding to the motion for a protective order and preparing for the deposition	1.5	\$262.50
May 16, 2008	Finalize the Memorandum Opposing Motion for Protection Order; copy to Mr. Gaither and client.	.30	\$15.00
May 16, 2008	Deposition of Jim Brough	3.5	\$612.50
May 19, 2008	Preparation of Certificate of Service. Revising and editing Third Request for Production of Documents.	.40	\$20.00
May 19, 2008	Correspondence with client	.20	\$10.00
May 19, 2008	Work on a request for documents referred to in the deposition and beginning work on the trial memorandum, research update on the prenuptial agreement.	2.2	\$385.00
May 22, 2008	Meeting with client to work on the exhibit list and to prepare for trial.	1.0	\$175.00
May 23, 2008	Trial preparation, organizing the exhibits.	1.5	\$262.50

May 27, 2008	Review and finalize motion, memo and notice to submit; Prepare mailing certificates; Prepared copies and mail; draft letter to client.	1.6	\$80.00
May 27, 2008	Work on the exhibit and witness list, going over all proposed exhibits and working on a trial memorandum.	2.0	\$350.00
May 28, 2008	Witness Fee - Basin Land		\$18.50
May 28, 2008	Witness Fee - Farm and Home		\$18.50
May 28, 2008	Witness Fee - Express Title		\$18.50
May 28, 2008	Witness Fee - Sunrise Title		\$18.50
May 28, 2008	Reviewing records that the recorders office and copying deeds of sales, reviewing prior divorce and working on subpoenas for title companies.	3.5	\$612.50
May 28, 2008	Preparation of Subpoena Duces Tecum and correspondence with Express Title. Telephone call with the same.	1.0	\$50.00
May 28, 2008	Preparation of Subpoena Duces Tecum and correspondence with Sunrise Title. Telephone call with the same.	1.0	\$50.00
May 28, 2008	Preparation of Subpoena Duces Tecum and correspondence with Farm and Home Title. Telephone call with the same.	1.0	\$50.00
May 28, 2008	Preparation of Subpoena Duces Tecum and correspondence with Basin Land and Title. Telephone call with the same.	1.0	\$50.00

May 29, 2008	Preparation of Subpoena's for service. Correspondence with client.	.60	\$30.00
June 12, 2008	Reviewing documents received by subpoena and working on the exhibit list	1.5	\$262.50
June 12, 2008	Correspondence with client	.20	\$10.00
June 12, 2008	Correspondence with Randall Gaither, client and telephone call with client.	.50	\$25.00
June 13, 2008	Research and working on the trial memorandum	.50	\$87.50
June 16, 2008	Ink Spot - Copies		\$22.71
June 16, 2008	State of Utah - Principle Search		\$1.00
June 16, 2008	Sunrise Title - Copies		\$63.75
June 16, 2008	Work on the witness and exhibit list.	.50	\$87.50
June 16, 2008	Correspondence with client	.20	\$10.00
June 16, 2008	Revising and editing Witness and Exhibit List.	.30	\$15.00
June 17, 2008	Correspondence with client	.20	\$10.00
June 17, 2008	Preparation of Subpoena's for Trial	1.0	\$50.00
June 18, 2008	Correspondence with client	.20	\$10.00
June 19, 2008	Witness Fee - Jared Jensen		\$18.50
June 19, 2008	Preparation of Subpoena's for service. Telephone call with service agent.	.30	\$15.00
June 20, 2008	Going over exhibit and witness lists, preparing objections, preparing for trial and organizing exhibits.	2.5	\$437.50

June 23, 2008	Correspondence with client..	.40	\$20.00
June 24, 2008	Discussions with appraiser and working on the exhibits.	1.5	\$262.50
June 25, 2008	Discussions with appraiser and working on exhibits	1.0	\$175.00
June 30, 2008	Work on the objection to the exhibits and witnesses, discussions with Kathy and discussion with R. Gaither about reviewing documents.	1.0	\$175.00
July 1, 2008	Work on Affidavit of Attorney Fees	2.0	\$100.00
July 2, 2008	Work on Affidavit of Attorney Fees	4.0	\$200.00

6. The fees charged are reasonable for legal services in the area.

7. The fees set forth herein were reasonable and necessary, and were billed to the Petitioner pursuant to a written fee agreement. The legal work included work by Clark B Allred and Brad Brotherson and their paralegals, Cheree Brotherson, Carrie Weight Debbie Reed and Melinda Palmer. Paralegals are used to reduce the costs to the client by doing research, document preparation, obtaining and providing information to the client and exhibit preparation. The firm has expended costs for filing fees, service fees, copies, witness fees and postage in this matter in the amount of \$547.53. Clark B Allred has expended 73.60 hours at a rate of \$165.00 - \$175.00 per hour; Brad Brotherson has expended 2.6 hours

at a rate of \$100.00; Melinda Palmer has expended 3.0 hours at a rate of \$80.00 per hour; and the other paralegals have expended 60.40 hours at a rate of \$45.00 - \$50.00 per hour.

DATED this 7 day of July, 2005.

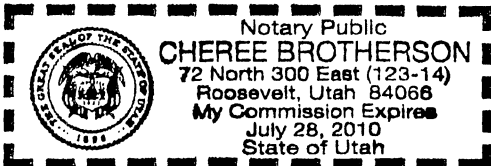
ALLRED & McCLELLAN, P.C.
Attorney for Petitioner


By: 

Clark B Allred

STATE OF UTAH)
) ss.
COUNTY OF DUCHESNE)

On the 7 day of July, 2008, personally appeared before me Clark B Allred, signer of the foregoing instrument, who duly acknowledged to me that he executed the same.




Notary Public

MAILING CERTIFICATE

I, Cheree Brotherson, am employed by the office of ALLRED & McCLELLAN, P. C. attorneys for Petitioner herein and hereby certify that I served the attached AFFIDAVIT OF ATTORNEY FEES on Respondent by fax and by placing a true and correct copy thereon in an envelope addressed to:

RANDALL GAITHER
ATTORNEY AT LAW
159 WEST 300 SOUTH BROADWAY #105
SALT LAKE CITY, UT 84101
(801)672-1162

and deposited the same, sealed, with first class postage prepaid thereon, in the United States mail at Roosevelt, Utah, on the 7th day of July, 2008.

A handwritten signature in black ink, appearing to read 'Cheree Brotherson', is written over a horizontal line.

CHEREE BROTHERSON

Case: 054000084

EIGHTH DISTRICT CT-ROOSEVELT
BROUGH, KATHRYN C vs. BROUGH, RICHARD JAMES

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BROUGH, KATHRYN C vs. BROUGH, RICHARD JAMES

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