

2006

# Kevin "Buck" Robinson v. Cindy Robinson : Brief of Appellee

Utah Court of Appeals

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Douglas B. Thayer; Andrew V. Wright; Courtney Davis; Hill, Johnson and Schmutz; Attorney for Appellant.

Cindy Robinson.

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## Recommended Citation

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IN THE UTAH COURT OF APPEALS

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KEVIN "BUCK" ROBINSON,	:	
	:	<b>ADDENDUM TO BRIEF OF</b>
	:	<b>APPELLEE/ CROSS</b>
Plaintiff/Appellant,	:	<b>APPELLANT</b>
	:	
v.	:	Appellate Case No. 20060810
	:	
CINDY ROBINSON,	:	
	:	Oral argument requested
Defendant/Cross-Appellant.	:	

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Appeal from the Judgment of the Fourth Judicial District Court,  
County of Utah, State of Utah  
The Honorable Anthony W. Schofield, District Court Judge

---

Cindy Robinson  
5344 White Dawn Circle  
Herriman, Utah 84096

Douglas B. Thayer  
Andrew V. Wright  
Courtney Davis  
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RiverView Plaza, Suite 300  
Provo, UT 84604  
Attorneys for Plaintiff/Appellant

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IN THE UTAH COURT OF APPEALS

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Attorneys for Plaintiff/Appellant

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<b><u>Exhibit</u></b>	<b><u>Title</u></b>
A	Amended Decree of Divorce
B	Amended Findings of Fact and Conclusions of Law
C	Trial Court's Ruling, dated June 16, 2006
D	Freedom Elementary School New Student Registration

# EXHIBIT A

**FILED**  
JUL 27 2006  
4TH DISTRICT  
STATE OF UTAH  
UTAH COUNTY

DOUGLAS B. THAYER (8109)  
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Attorneys for Petitioner

IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

KEVIN "BUCK" ROBINSON,

Petitioner,

vs.

CINDY ROBINSON,

Respondent.

**AMENDED DECREE  
OF DIVORCE**

Case No.: 034401310  
Judge Schofield

The above-entitled action came before the Court on the 21 and 22 days of March, 2006 for trial. The Court having previously divorced the parties, having established jurisdiction and having entered its Findings of Fact and Conclusions of Law, now enters the following:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

**I. GENERAL**

1. The parties married in August 1974 and separated approximately April 1, 2003.
2. On September 5, 2003, Buck obtained a decree of divorce.
3. The Court shall fix the asset valuation and distribution based on the assets existing and their values as of September 5, 2003.

4. In the fall of 2005, the parties stipulated that Buck would be awarded custody of the children and the parties stipulated to a visitation schedule.

## **II. VALUATION OF BUSINESS ASSETS**

### **A. KBR Systems, Inc. (“KBR”)**

5. Buck is a 50% stockholder in KBR. This stock is a marital asset.
6. As of April 30, 2003, the most recent accounting before the September 2003 divorce date, KBR had an adjusted stockholders equity of \$1,287,516.
7. As between them, Buck and his KBR partner, Mr. Steven Cardin, agreed in a buy-sell agreement that in the event of death of either, the other could buy out the deceased partner’s estate by paying 125% of this stockholders equity.
8. Buck and Mr. Cardin also agreed that in the event of an involuntary dissolution of the company that the buy-out amount would be book value without any premium or discount.
9. KBR lacks marketability for at least four reasons: (1) KBR lacks diversification and is heavily dependent on the economic outlook in the construction industry; (2) it relies heavily on its key managers so the loss of either Mr. Cardin or Buck could significantly impact its ability to generate cash flow and income as it has in the past; (3) the company operates primarily in Utah and Nevada, and thus, its business is dependent upon the continued strength of the construction market in

those two states; and (4) given its size, the company cannot expect to obtain financing without the personal guarantees of Buck and Mr. Cardin.

10. Each of these factors has a direct and significant impact on the true value of KBR.
11. The discount for lack of control also is based in fact. Without the direct and ongoing input and daily involvement of the two shareholders, the company would have significantly less value. Indeed, without their direct involvement the company likely would fold.
12. The ongoing success of KBR is directly dependent upon the continued involvement of Buck and Mr. Cardin in its operation and in the solicitation and performance of construction contracts.
13. The business valuator, Mr. Townsend, applied a numerical percentage discount based on these two discounts. The aggregate discount which he imposed is a discount of 27%.
14. In his analysis, Mr. Townsend concluded that the proper value of the company, based on book value with discounts for lack of control and lack of marketability, is \$944,856.
15. Because Mr. Townsend did not provide reasons for his selection of the amounts of the discounts which he applied in this case, the Court will not accept his decisions of the discount amounts whole cloth.



16. Since the business is so dependent upon Buck and Mr. Cardin and because of the factors set forth above which demonstrate that both lack of control and lack of marketability have a direct, significant impact on the value of the company, simply utilizing book value also is inappropriate.
17. In the Court's view, the discounted value proposed by Mr. Townsend represents the lowest possible figure that the court can use in fixing the value of this marital asset while book value represents the highest possible figure that the court can use.
18. It is not appropriate simply to split the difference between book value and Mr. Townsend's discounted value. Rather, a fair valuation would be two-thirds of the way between Mr. Townsend's discounted value and book value.
19. The two-thirds point between book value and discounted book value is \$1,173,296. The Court fixes the value of KBR, as of September 5, 2003, in that amount.
20. Buck's one-half interest in KBR thus is worth \$586,648.
21. Buck shall be awarded KBR free of any claims of Cindy at a value of \$586,648.
- B. BASCO, LLC ("BASCO")**
22. Buck also is a 50% interest holder in BASCO, a land holding company whose primary asset is the business building and property from which KBR Systems

operates its business. KBR leases this property from BASCO.

23. Buck's interest in BASCO also is a marital asset.
24. The business of BASCO is largely a passive business. Essentially all that BASCO is obligated to do is to collect the rents and pay the mortgage debts and real property taxes.
25. The net asset value of BASCO, as of September 5, 2003, was fixed by Norman, Townsend & Johnson, LLC, at \$515,750.
26. Because BASCO's business does not require any significant management or oversight from either Buck or Mr. Cardin, the discounts from value that Mr. Townsend applied in determining a recommended value to the court for purposes of this marital dissolution are not proper. The Court declines to accept his discounts, but simply fixes the value of BASCO at book value.
27. Mr. Cardin now will have Cindy as his partner in BASCO rather than Buck.
28. The value of Buck's one-half interest in BASCO, as of September 5, 2003, is fixed at \$257,875. This shall be awarded to Cindy.
29. In order to reduce the amount of ongoing connection between Buck and Cindy hereafter, Buck's entire interest in BASCO shall be awarded to Cindy.
30. If either Mr. Cardin or Buck wish a different result, they will have to find a mechanism to buy out Cindy's interest in BASCO awarded here.

### III. VALUATION OF REAL PROPERTY

#### A. Lehi Home

31. At the time of the divorce in 2003 Buck and Cindy owned a home in Lehi, Utah, which had a value of \$550,000.
32. As of April 1, 2003, there was owing on the home a mortgage to National City Mortgage with a balance of \$317,119.
33. On or about April 1, 2003, Buck refinanced the National City Mortgage loan and replaced it with a home equity loan from Wells Fargo. That loan had an initial balance, including refinance fees, of \$319,445.
34. Applying the \$319,445 balance due National City Mortgage (**Wells Fargo?**) against the home value of \$550,000 results in an equity in the home of \$230,555.
35. After their separation, Buck moved from the home while Cindy continued to reside in it. Cindy shall be awarded the home, including any appreciation since the September 2003 divorce, and the obligation to pay the debt of \$319,445 thereon.
36. Cindy shall refinance or sell this home within one year so that she and Buck no longer are financially entangled together.
37. Buck has incurred additional charges against the home equity loan after April 1,

2003. He shall be responsible for these and he must fully cooperate with Cindy in the sale or refinance of the home, including making arrangements for his refinance of his portion of the home equity line.

**B. Cedar Hills Home**

38. Buck and his new wife, Lynette, have obtained a new home. This is a post-divorce acquisition and both the home and any debt thereon are the sole property and responsibility of Buck.

**IV. VALUATION OF PERSONAL PROPERTY**

39. At the time of separation the parties had \$25,985 in a marital checking account. Buck was the sole signer on this checking account and the account shall be awarded to him.
40. At the time of the divorce the parties owned a travel trailer. Buck sold the travel trailer and kept the cash therefrom. He shall be charged \$18,000 for this asset, which was its fair value.
41. At the time of the divorce Cindy owned a 401(k) retirement account having a value of \$2,561. This account shall be awarded to Cindy.
42. At the time of the divorce Buck owned a 401(k) retirement account having a value of \$95,929. The Court orders, that a QDRO be issued with respect to this account, thus benefitting each party equally.

43. In 1996 Buck's parents sold Buck a parcel of ground in Pleasant Grove for \$37,000, of which he paid \$7,000 down and was obligated to pay three annual payments of \$10,000 each. Buck paid the initial down payment but failed to make any of the other payments. Thereafter Buck's mother, Nelda Robinson, forfeited the contract and Buck lost any claim to this property. Any marital interest in the property, indeed any interest in the property, was forfeited many years before the parties' separation. Neither party has any present interest in this parcel.
44. All of the personal property which relates to the furniture in a particular child's bedroom shall be awarded to that child and shall be kept by that child in the primary residence of the child. The total value for all of these items is \$3,180.
45. All items which Buck acquired after he separated from Cindy, including those items purchased for his new home with Lynette or those items Lynette brought to her marriage to Buck, are not marital property. These items include 3 shop vacuums, 2 kids go-carts, dutch oven cook ware, Buck's bedroom set from 6/03, Oreck vacuum, rocking chair, leather sofa set, barbeque and 2 large silk trees. The total value for all of these items is \$12,050.
46. The propane heaters 2 each large and chop saw belong to KBR. These items are not marital property. The total value of these items is \$800.
47. Cindy overvalued her diamond ring by \$7,800, Buck's guns by \$2,800 (he bought

approximately one-half of them post-separation), the pictures and decorations which Buck took by \$500 (she charges him significantly more for these items than she valued the similar items which she retained), lawn mowers by \$300 (Lynette brought one of the law mowers to her marriage), two 27 inch televisions by \$300 (Buck only took one), three large wreaths by \$170 (Buck only took one, not three). The total value for overvaluing all of these items shall be \$11,870 .

48. The air conditioning covers, the camping and fishing gear, and the bow and arrows are located at the home in Lehi. The total value of these items is \$3,250.
49. Also, Buck did not take from the home in Lehi the wicker outside patio set, 32 inch color television, white Ford Taurus and horse tools and tack. The total value of these items is \$2,100.
50. Cindy valued all of the items on her side of the ledger at \$21,350. She valued all of the items on Buck's side of the ledger at \$50,005. With the foregoing adjustments Cindy's side of the ledger shall increase to \$23,520 while Buck's side of the ledger shall decrease to \$19,935.
51. After entry of the divorce, Buck bought a Ford Taurus automobile for Cindy at a cost of \$8,484. Though purchased post-divorce, this vehicle constitutes a marital asset and shall be charged to Cindy.
52. Cindy forged a check payable to Buck to reimburse his payment for the repair of

the vehicle given to Cherice. She shall be charged with this item in the sum of \$1,044.

- 53. During calendar years 2003 and 2004 Buck received distributions from BASCO in the sum of \$35,000. These distributions shall be charged to Buck.
- 54. A worksheet which details the assignment of assets as set forth herein is attached as an exhibit.

#### **V. ASSIGNMENT OF DEBTS AND OTHER PAYMENTS**

- 55. As of September 2003, the parties owed a debt to KBR, for a loan from KBR to Buck which was a loan made for marital purposes, in the sum of \$87,325. Buck has paid this loan post divorce, but shall receive a credit for it.
- 56. At the time of the parties' separation, they owed \$319,445 on a home equity loan on their home. This was the only mortgage indebtedness on their home. This loan was a marital obligation. As noted above, Cindy shall be awarded the marital home. Because she is awarded the home it is proper that she shall be required to pay the home equity loan debt that existed at the time of the separation of the parties in the sum of \$319,445.
- 57. After April 1, 2003, Buck incurred additional debt on the home equity line. Buck shall repay all of the home equity loan debt on the home incurred after April 1, 2003.

58. Within one year from the date hereof Cindy shall either sell the home or refinance it. Buck shall refinance that portion of the home equity loan that he is obligated to repay. Each party shall cooperate in good faith with the other to obtain the refinance of this loan.
59. Until this loan is refinanced or the home sold, the parties shall be obligated for interest payments on the home equity line based upon their separate shares of the total home equity line debt as set forth herein.
60. At the time of the separation of the parties, Cindy had credit card debt in the sum of \$22,552. This is marital debt. Cindy shall be assigned repayment of this debt. Further, post-separation she has continued to charge against her credit cards. She shall be fully responsible for all of the payments on these cards, both pre- and post-separation.
61. Shortly before the separation, Cindy incurred \$3,000 on a line of credit which Buck subsequently paid. Because this obligation was incurred pre-separation it is a marital obligation. Buck shall be given credit for this payment.
62. In order to resolve the custody issue the parties obtained the services of Dr. Darren Featherstone, a custody evaluator, for which Buck paid \$5,500. Buck shall be entitled to a credit for that amount.
63. Because the business of the parties needed to be valued, the parties retained the



services of Norman, Townsend & Johnson, LLC., for which Buck paid \$17,366.

Buck shall be entitled to a credit for that amount.

64. Because the home of the parties needed to be valued, the parties retained the services of Denbow Appraising, for which Buck paid \$400. Buck shall be entitled to a credit for that amount.

65. Because the business valuation required a real estate appraisal of the property of BASCO, Mr. Townsend retained the services of Jerry R. Webber, a real estate appraiser, for which Buck paid \$5,000. Buck shall be entitled to a credit for that amount.

66. As set forth in the worksheet, the value of the assets awarded to Buck, less the credits for debts and payments which he made or is responsible for, is \$566,977. The value of the assets awarded to Cindy, less the credits for debts and payments which she made or is responsible for, is \$501,487. This results in a difference of \$65,490 in Buck's favor. To equalize the assignment of assets, Buck shall pay to Cindy the sum of \$32,745. In order for the parties to be disentangled, Buck shall pay this sum to Cindy within six months.

## **VI. ALIMONY**

### **A. Prior to the February 2004 Temporary Order**

67. Prior to the temporary order hearing in February 2004, Buck paid all of the

utilities on the home that Cindy resided in, the monthly interest expense on the home equity loan, all of the car payments for the vehicle which Cindy drove and for the vehicle which the parties' daughter, Cherice, drove. Additionally, during the time prior to the February hearing Buck paid Cindy \$300 per week.

68. For the period before the temporary order hearing, the record is clear that without order or direction, Buck paid significant sums to Cindy and for her benefit during the approximately ten months between the separation of the parties and the temporary order hearing. Cindy's essential needs were being met by the payments made by Buck on her behalf.
69. The Court denies Cindy's request that she be awarded alimony for the period from the parties' separation to the time of the hearing on temporary orders in February 2004.

**B. From the February 2004 Temporary Order to the Trial**

70. At a hearing on temporary orders held in February 2004, the court ordered Buck to pay alimony to Cindy in the monthly sum of \$3,250.
71. At the time of trial, Buck was current on all ordered alimony payments to Cindy.
72. During the period after entry of the temporary order and until the time of trial, Buck paid Cindy alimony as ordered at the temporary order hearing of \$3,250 per month. Additionally, Buck paid the interest on the home equity loan on the home

that Cindy lived in of between \$1,700 and \$1,900 per month. Finally, during most of this period Buck also paid nearly \$300 per month for Cindy's health insurance premium. Thus, since the temporary order of February 2004, Buck has paid to Cindy or for her direct benefit about \$5,350 per month.

73. Additionally, during the separation and after the divorce of the parties Buck paid the property taxes on the marital home in which Cindy resides in the sum of \$6,227, and paid insurance on the home in the sum of \$1,470. These payments were in the nature of alimony. When amortized over 24 months, this results in Cindy receiving approximately \$320 more in temporary alimony than the \$5,350 set forth above, or approximately \$5,670 per month or \$68,040 per year.
74. The Court also denies Cindy's request that alimony be recalculated for the period after the temporary order hearing and before trial.

**C. Permanent Alimony Following Trial**

75. Any decision of \_\_\_\_\_ ctored on the length of the parties' marriage. They \_\_\_\_\_eparated in April 2003, a period of over 28 years.
76. Cindy has been engaged in a significant, ongoing, sexual relationship with Mr. Bradbury that bordered on cohabitating and this fact shall be measured and considered in determining alimony in this case.

77. During the marriage of the parties Buck has been the sole provider for the family. In his construction business he has made a very good income. Buck's aggregate income for calendar years 2002, 2003 and 2004 is \$410,100, or an annual average of \$136,700. In 2005 he had income of \$310,410. For the four year period of 2002-2005 he had aggregate income of \$720,510, or an annual average of \$180,127.
78. In addition to the foregoing facts concerning Buck's income, in August 2003 Buck applied for a loan and reported income of \$170,000 per year, and in July 2004 Buck applied for a loan and reported income of \$18,500 per month or \$222,000 per year.
79. Taken together, for purposes of fixing alimony, Buck has the capacity of earning not less than \$150,000 per year.
80. At the time of the parties' separation Buck owed KBR \$87,325. Since the separation that indebtedness has increased to \$216,347. Then, also as noted above, in late 2005 Buck made a payment to reduce that debt of \$63,550, leaving a present indebtedness which he owes to KBR of \$189,796. Thus, during the time since the separation of the parties Buck's indebtedness to KBR has increased by the sum of \$102,471.
81. In addition to borrowing from KBR, during the same time Buck has made

additional draws on the home equity line of \$122,412. Of that, Buck used \$83,689 as a part of the down payment for his new home. He thus received \$38,723 in funds not used for his new home.

82. The appropriate level of permanent alimony in this case considers the amount of alimony and payments in the form of alimony which Buck made under the temporary order, as moderated by the amount of debt which he had to incur to make those payments, coupled with the income which Buck received from KBR as reported on his tax returns.
83. Cindy has never worked much during the marriage and does not have skills to earn significant income for her self-support. Thus she needs alimony. During the pendency of this proceeding, and after the entry of the temporary order, Cindy has received financial assistance from Buck in the sum of \$5,670 per month. Other than payment of her attorney's fees, she has been able to meet most or all of her living expenses with this level of alimony.
84. In this case the parties enjoyed an excellent standard of living during the marriage. In order for each party to continue with the standard of living which they enjoyed during the marriage, Cindy shall be awarded alimony.
85. In this case an alimony award of \$4,000 per month (\$48,000 per year) will represent 32% of Buck's gross income capacity as set forth above. As well, it will

allow payment by Cindy of the obligations which she is obligated to undertake in this matter. And it will allow Cindy still to have funds available to meet her reasonable ongoing living expenses. Alimony shall be fixed in the sum of \$4,000 per month, to terminate on Cindy's remarriage, her cohabiting, the death of either party, Buck's permanent disability, or 28 years, which ever comes first.

86. Until such time as Cindy sells the Lehi home or refinances it, Buck may make the interest or mortgage payments on the home that Cindy is obligated to pay and deduct those payments from his alimony obligation so that his credit will not be impaired by any failure of Cindy to make timely payment.
87. The only significant evidence of fault is Cindy's near cohabitation. Evidence of any other significant fault has not been presented. Cindy has openly flaunted her relationship with Mr. Bradbury while continuing to demand alimony.

## **VII. MISCELLANEOUS**

### **A. Tax Dependency Exemptions**

88. Buck shall be awarded the right to claim the children as dependents for tax purposes.

### **B. Life Insurance**

89. Cindy shall be named as beneficiary under Buck's life insurance policy which has a face value of \$2 million for an undivided \$750,000 of its policy limits for any

period as to which she is entitled to an alimony.

**C. Attorney's Fees**

90. Each seeks an award of attorney's fees from the other. Both sides have prevailed on some of their issues. It is nearly impossible to determine which side has been the more successful. The Court declines to make an award of attorney's fees on the basis of who prevailed at one or more hearings.
91. Because neither party has the ability to pay the fees of the other, the Court denies an award to either party of attorney's fees as against the other.

**D. Child Support**

92. Cindy shall pay child support in the sum of \$148 per month. As well, it is appropriate that the provisions of title 78-45-1, *et seq.*, having to do with payment of expense for the children, including medical expenses, shall govern in this case.

**VIII. CONTEMPT**

93. The Court finds that it has been proven by clear and convincing evidence that on two different occasions the Court ordered Cindy to turn all of the children's toys and clothes over to Buck, as custodial parent, that Cindy understood the directions of the court and she had the capacity to comply. Instead, however, she chose to make her own decision about what clothes and toys should be delivered to Buck as the custodial parent. In so doing Cindy ignored the direction and order of the

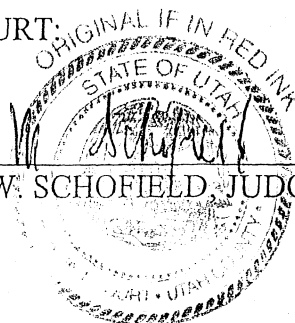
court.

94. Cindy is in contempt of the orders of the court because of her failure to deliver to Buck the clothes and toys of the children that she was directed to deliver.
95. Cindy is not in contempt of court because of an incident involving a cellular phone.
96. Buck is not in contempt of court.
97. Payment of monetary sanctions is not appropriate in this matter. While jail is an alternative, it is a poor alternative. The Court declines to impose a jail sentence as a sanction for contempt of court.
98. In order to move past her contempt in this case Cindy shall perform 80 hours of community service at the Food and Care Coalition of Utah County and she shall do so within 60 days of the entry of an order in this matter. If the Food and Care Coalition is unable to use her community service on the schedule set forth, she shall perform community service under the direction of the United Way of Utah County.

Dated this 27 day of July, 2006.

BY THE COURT:

  
ANTHONY W. SCHOFIELD, JUDGE





Approved as to form:

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Steven Tycksen  
Attorney for Respondent

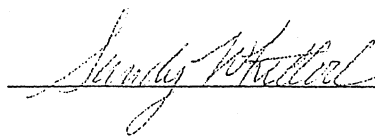
**CERTIFICATE OF MAILING**

The undersigned hereby certifies that on the 10<sup>th</sup> day of July, 2006 she caused a true and correct copy of the foregoing Amended Decree of Divorce to be delivered to the following:

Steven C. Tycksen  
Zoll & Tycksen, LC  
5300 South 360 West, Suite 360  
Murray, Utah 84123

Sent Via:

☐ Hand-Delivery  
☐ Facsimile  
☒ Mailed (postage prepaid)

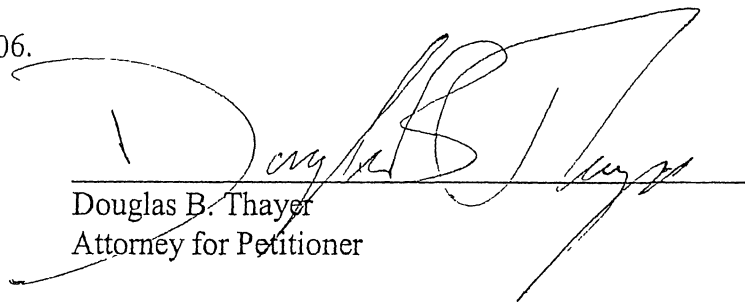
  
\_\_\_\_\_

**NOTICE OF INTENT TO SUBMIT FOR SIGNATURE**

TO: STEVEN C. TYCKSEN, ATTORNEY FOR RESPONDENT:

You will please take notice that the undersigned attorney for the Petitioner will submit the above and foregoing Amended Findings of Fact, Conclusions of Law and Amended Decree of Divorce to the Court for signature upon the expiration of five (5) working days from the date of this notice, plus three (3) days for mailing, unless written objection is filed prior to that time pursuant to Rule 4-504 of the Utah Rules of Judicial Administration.

DATED this 6<sup>th</sup> day of July, 2006.



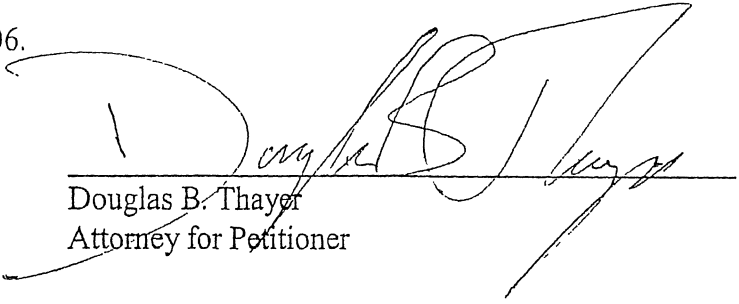
Douglas B. Thayer  
Attorney for Petitioner

**NOTICE OF INTENT TO SUBMIT FOR SIGNATURE**

TO: STEVEN C. TYCKSEN, ATTORNEY FOR RESPONDENT:

You will please take notice that the undersigned attorney for the Petitioner will submit the above and foregoing Amended Findings of Fact, Conclusions of Law and Amended Decree of Divorce to the Court for signature upon the expiration of five (5) working days from the date of this notice, plus three (3) days for mailing, unless written objection is filed prior to that time pursuant to Rule 4-504 of the Utah Rules of Judicial Administration.

DATED this 6<sup>th</sup> day of July, 2006.



Douglas B. Thayer  
Attorney for Petitioner

# **EXHIBIT B**

**FILED**  
JUL 27 2006  
4TH DISTRICT  
STATE OF UTAH  
UTAH COUNTY

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IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

KEVIN "BUCK" ROBINSON,

Petitioner,

vs.

CINDY ROBINSON,

Respondent.

**AMENDED  
FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

Case No.: 034401310  
Judge Schofield

The above entitled matter came on regularly for trial on March 21, and 22, 2006 before the Honorable Anthony Schofield, Fourth District Court Judge, presiding and sitting without jury. The Petitioner appeared in person and was represented by his attorney, Douglas B. Thayer. The Respondent appeared in person and was represented by her attorney, Steven C. Tycksen. The court received evidence on behalf of both parties and heard the arguments of counsel and being otherwise fully advised in the premises, does now hereby make and enter its Findings of Fact and Conclusions of Law:

### FINDINGS OF FACT

1. The parties married in August 1974 and separated approximately April 1, 2003.
2. Cindy was served with a petition in this matter. On September 5, 2003, after she did not answer the petition, Buck obtained a decree of divorce.
3. Subsequently all of the provisions of that divorce decree except the divorce itself were set aside. Thus after September 2003 the parties needed to resolve custody of the children and their support, alimony, property distribution and assignment of debts.
4. In the fall of 2005 the parties stipulated that Buck would be awarded custody of the children and they stipulated to a visitation schedule.
5. Buck is a 50% stockholder in KBR Systems, Inc.
6. Though he is a 50% stockholder, the stock which Buck owns is a marital asset.
7. KBR is a small, though profitable and apparently well-run, construction company. There are two shareholders, Buck and his partner Steven Cardin.
8. As of April 30, 2003, the most recent accounting before the September 2003 divorce date, KBR had an adjusted stockholders equity of \$1,287,516.
9. As between them, Buck and Mr. Cardin agreed in a buy-sell agreement that in the event of death of either, the other could buy out the deceased partner's estate by paying 125% of this stockholders equity.
10. Buck and Mr. Cardin also agreed that in the event of an involuntary dissolution of the company that the buy-out amount would be fixed at stockholders equity without any premium

or discount.

11. Among the issues which directly impacts KBR's marketability are that it lacks diversification and is heavily dependent on the economic outlook in the construction industry; it relies heavily on its key managers, so loss of either Mr. Cardin or Buck could significantly impact its ability to generate cash flow and income as it has in the past; the company operates primarily in Utah and Nevada, and thus, its business is dependent upon the continued strength of the construction market in those two states; and, finally, given its size, the company cannot expect to obtain financing without the personal guarantees of Buck and Mr. Cardin.

12. Each of these factors has a direct and significant impact on the true value of the business.

13. The discount for lack of control also is based in fact. Without the direct and ongoing input and daily involvement of the two shareholders, the company would have significantly less value. Indeed, without their direct involvement the company likely would fold.

14. The ongoing success of KBR is directly dependent upon the continued involvement of Buck and Mr. Cardin in its operation and in the solicitation and performance of construction contracts.

15. The business valuator, Mr. Townsend, applied a numerical percentage discount based on these two discounts. The aggregate discount which he imposed is a discount of 27%.

16. In his analysis, Mr. Townsend concluded that the proper value of the company, based on book value with discounts for lack of control and lack of marketability, is \$944,856.



17. Mr. Townsend admitted that he arrived at the percentage amount of the discounts himself, that there is no set formula for arriving at these amounts, but that using his best, professional judgment, the aggregate discount of 27% is appropriate.

18. As noted above, as between themselves, Mr. Cardin and Buck agreed that in the event of an involuntary transfer, and certainly this divorce would constitute such an involuntary transfer, the appropriate buy out price would be book value without either discount or premium.

19. Mr. Townsend testified at length at trial. Distilled to its essence, it seemingly appears he picked the amounts of the two discounts out of the air. While he gave a rationale for the imposition of the two discounts, he did not provide any meaningful basis for his choice of the amounts of the two discounts. Indeed, he conceded that he himself selected the amounts of the two discounts.

20. Because he did not provide reasons for his selection of the amounts of the discounts which he applied in this case, I am not willing to accept his decisions of the discount amounts whole cloth.

21. On the other hand, Buck previously agreed with his partner that in the event of an involuntary dissolution book value would control. It can be argued with fair persuasion that to give to his partner a greater potential recovery than his ex-spouse is patently unfair.

22. Recognizing that the business is so dependent upon Buck and Mr. Cardin and because of the factors set forth above which demonstrate that both lack of control and lack of marketability have a direct, significant impact on the value of the company, simply utilizing book

value also is inappropriate.

23. In my view, the discounted value proposed by Mr. Townsend represents the lowest possible figure that the court can use in fixing the value of this marital asset while book value represents the highest possible figure that the court can use.

24. If there is to be error in this matter, that error should be in Cindy's favor, as, by the award of the stock in KBR to Buck, she is being divested of any claim to one of the two largest income generating assets of the marriage. She should only be divested of her interest in exchange for a fair value.

25. It is not appropriate simply to split the difference between book value and Mr. Townsend's discounted value. Rather, I am convinced that a fair valuation would be two-thirds of the way between Mr. Townsend's discounted value and book value.

26. The two-thirds point between book value and discounted book value is \$1,173,296. I fix the value of KBR, as of September 5, 2003, in that amount.

27. Buck's one-half interest in KBR thus is worth \$586,648.

28. Buck also is a 50% interest holder in BASCO, LLC, a land holding company whose primary asset is the business building and property from which KBR Systems operates its business. KBR leases this property from BASCO.

29. Buck's interest in BASCO also is a marital asset.

30. The business of BASCO is largely a passive business. BASCO owns two properties. One is the property which KBR rents from BASCO as a location from which to

operate its business. This property is encumbered by certain mortgage debts. Essentially all that BASCO is obligated to do with respect to this property, and as a result of its lease to KBR, is to collect the rents and pay the mortgage debts and real property taxes.

31. BASCO owns a second property which requires only the same level of involvement in its maintenance.

32. The net asset value of BASCO, as of September 5, 2003, was fixed by Norman, Townsend & Johnson, LLC, at \$515,750.

33. Because BASCO's business does not require any significant management or oversight from either Buck or Mr. Cardin, the discounts from value that Mr. Townsend applied in determining a recommended value to the court for purposes of this marital dissolution are not proper. True, under the decision here made, Mr. Cardin now will have Cindy as his partner in BASCO rather than Buck, but the effort necessary to continue the operation of the business with Cindy as a partner rather than Buck will not be any different than now existing.

34. As Buck is a 50% owner of BASCO, the net asset value of his one-half interest in BASCO is \$257,875.

35. There is no persuasive reason to discount the net asset value set forth above and I decline to do so. The value of Buck's one-half interest in BASCO, as of September 5, 2003, is fixed at \$257,875.

36. In order to reduce the amount of ongoing connection between Buck and Cindy hereafter, Buck's entire interest in BASCO should be awarded to Cindy.

37. At the time of the divorce in 2003 Buck and Cindy owned a home in Lehi, Utah, which had a value of \$550,000. As of April 1, 2003, there was owing on the home a mortgage to National City Mortgage with a balance of \$317,119.

38. On or about April 1, 2003, Buck refinanced the National City Mortgage loan and replaced it with a home equity loan from Wells Fargo. That loan had an initial balance, including refinance fees, of \$319,445.

39. Applying the \$319,445 balance due National City Mortgage against the home value of \$550,000 results in an equity in the home of \$230,555. The value of the home and this loan amount each should be accounted for in the final financial settlement between the parties.

40. After their separation, Buck moved from the home while Cindy continued to reside in it. It is appropriate the Cindy be awarded the home and the obligation to pay the debt of \$319,445 thereon.

41. After the September 2003 divorce Buck remarried and he and his new wife, Lynette, have obtained a new home. Though Cindy claims she should share in any equity in this home, this is a post-divorce acquisition and both the home and any debt thereon are the sole property and responsibility of Buck.

42. At the time of separation the parties had \$25,985 in a marital checking account.

43. Buck was the sole signer on the checking account and he kept those proceeds. He is entitled to do so, but must be charged for that amount in the final financial settlement between the parties.

44. At the time of the divorce the parties owned a travel trailer. Buck sold the travel trailer and kept the cash therefrom. He received \$18,000, which was its fair value. He must be charged for that amount in the final financial settlement between the parties.

45. At the time of the divorce Cindy owned a 401(k) retirement account having a value of \$2,561. This account should be awarded to Cindy and she must be charged for that amount in the final financial settlement between the parties.

46. At the time of the divorce Buck owned a 401(k) retirement account having a value of \$95,929. Buck agrees that a QDRO be issued with respect to this account, thus benefitting each party equally.

47. In 1996 Buck's parents sold Buck a parcel of ground in Pleasant Grove for \$37,000, of which he paid \$7,000 down and was obligated to pay three annual payments of \$10,000 each. Buck paid the initial down payment but failed to make any of the other payments. Thereafter Buck's mother, Nelda Robinson, forfeited the contract and Buck lost any claim to this property. Cindy now asserts that she has a marital interest in this parcel. Rather, however, any marital interest in the property, indeed any interest in the property, was forfeited many years before the parties' separation. Neither party has any present interest in this parcel.

48. The personal property of the parties has been divided. That division is generally appropriate; however, Cindy asserts that the division of personal property results in Buck receiving considerably more value than she received. The following adjustments with respect to the personal property of the parties are appropriate:

49. Exhibit 69 is Cindy's list of the personal property distribution, including values. All of the personal property which relates to the furniture in a particular child's bedroom should be awarded to that child and should be kept by that child in the primary residence of the child. For example, on page one of exhibit 69, after the title "Kenzie Bed room" two dressers, a bench, two end tables, a green tree, a tv/vcr combo and a lamp are listed. These all should be given to Kenzie and their value subtracted from the reconciliation. Similar adjustments should be made for the items under the titles: "Cabree play room downstairs", "Kids toy room", "CaBree bedroom" and "Chaz room". The total value for all of these items is \$3,180. That amount should be subtracted from Cindy's side of the ledger in arriving at a financial reconciliation on the personal property items. This is because each of these items is treated as belonging to the child and not to either of the parents.

50. Cindy included a large number of items on Buck's side of the ledger which he acquired after he separated from Cindy. Most of these were purchased for his new home with Lynette or were Lynette's which she brought to her marriage to Buck. All of these items should be removed from Buck's side of the ledger as they are not marital property. This list includes 3 shop vacuums, 2 kids go-carts, dutch oven cook ware, Buck's bedroom set from 6/03, Oreck vacuum, rocking chair, leather sofa set, barbeque and 2 large silk trees. The total value for all of these items is \$12,050. That amount should be subtracted from Buck's side of the ledger in arriving at a financial reconciliation on the personal property items.

51. Cindy included two items on Buck's side of the ledger which belong to KBR,

propane heaters 2 each large, and chop saw. These items should be removed from Buck's side of the ledger as they are not marital property. The total value of these items is \$800 . That amount should be subtracted from Buck's side of the ledger in arriving at a financial reconciliation on the personal property items.

52. Cindy included in the list a large number of items on Buck's side of the ledger which she overvalued. She overvalues her diamond ring by \$7,800, Buck's guns by \$2,800 (he bought approximately one-half of them post-separation), the pictures and decorations which Buck took by \$500 (she charges him significantly more for these items than she valued the similar items which she retained), lawn mowers by \$300 (Lynette brought one of the law mowers to her marriage), two 27 inch tvs by \$300 (Buck only took one), three large wreaths by \$170 (Buck only took one, not three). The total value to be removed on account of Cindy's overvaluing for all of these items is \$11,870 . That amount should be subtracted from Buck's side of the ledger in arriving at a financial reconciliation on the personal property items.

53. Cindy included on the list as being in Buck's possession three items which he left in Cindy's home in Lehi. These are the air conditioning covers, the camping and fishing gear, and the bow and arrows. The total value of these items is \$3,250. These items should be removed from Buck's side of the ledger and added to Cindy's side of the ledger in arriving at a financial reconciliation on the personal property items.

54. Finally, Cindy included in the ledger several items which Buck did not take from her home in Lehi, including wicker outside patio set, 32 inch color tv, white Ford Taurus and

horse tools and tack. The total value of these items is \$2,100. These items should be removed from Buck's side of the ledger and added to Cindy's side of the ledger in arriving at a financial reconciliation on the personal property items.

55. Cindy valued all of the items on her side of the ledger at \$21,350. She valued all of the items on Buck's side of the ledger at \$50,005. With the foregoing adjustments Cindy's side of the ledger should increase to \$23,520 while Buck's side of the ledger should decrease to \$19,935.

56. After the parties separated, indeed, after entry of the divorce, Buck bought a Ford Taurus automobile for Cindy at a cost of \$8,484. Though purchased post-divorce, this vehicle constitutes a marital asset and its value must be included in the final financial reconciliation between the parties.

57. The parties' adult daughter Cherice was driving a vehicle on which Buck was making the payments. Though Buck claims those payments should be charged against Cindy, this is in error as Buck made the decision to allow Cherice to drive the vehicle. Indeed, it appears he purchased the vehicle for Cherice as a birthday present.

58. While driving the vehicle, Cherice wrecked the vehicle. Buck made arrangements to have it repaired. Buck paid for this repair. The insurance company issued a check in the amount of \$1,044 to cover the repairs, which check was payable to Buck. Cindy took the check, forged Buck's signature, and cashed the check. Buck is entitled to a credit in that amount in the final financial reconciliation between the parties.



59. During calendar years 2003 and 2004 Buck received distributions from BASCO. These distributions were in addition to the salary and other payments which he received from KBR. In 2003 Buck received a distribution of \$20,000, and in 2004 he received a distribution of \$15,000. Because these payments were made to the members/owners of BASCO, they were distributions of marital assets and should be accounted for in the final financial reconciliation between the parties.

60. As of September 2003, the parties owed a debt to KBR, for a loan from KBR to Buck which was a loan made for marital purposes, in the sum of \$87,325. Buck has paid this loan post divorce, but should receive a credit for it in the final financial settlement between the parties.

61. At the time of the parties' separation, they owed \$319,445 on a home equity loan on their home. This was the only mortgage indebtedness on their home. This loan was a marital obligation.

62. As noted above, Cindy will be awarded the marital home. Because she is awarded the home it is proper that she should be required to pay the home equity loan debt that existed at the time of the separation of the parties in the sum of \$319,445.

63. After April 1, 2003, Buck incurred additional debt on the home equity line. Buck must repay all of the home equity loan debt on the home incurred after April 1, 2003.

64. Further, because the continuation of this loan will result in the continued financial entanglement of the parties, it is appropriate that within one year from the date hereof Cindy

either sell the home or refinance it. Buck must fully cooperate with this, including refinancing that portion of the home equity loan that he is obligated to repay.

65. At the time of the separation of the parties Cindy had credit card debt in the sum of \$22,552. Though during the marriage Buck continually tried to convince Cindy not to incur credit card debt, this debt was incurred pre-separation and thus is marital debt. Cindy should be assigned repayment of this debt and it should be included in the final financial reconciliation between the parties.

66. Shortly before the separation Cindy incurred \$3,000 on a line of credit which Buck subsequently paid. Because this obligation was incurred pre-separation it is a marital obligation. Buck should be given credit for this payment in the final financial reconciliation between the parties.

67. The parties quarreled about custody of the children. In order to resolve that issue they obtained the services of Dr. Darren Featherstone, a custody evaluator, for which Buck paid \$5,500. Buck is entitled to a credit for that amount in the final financial settlement between the parties.

68. Because the business of the parties needed to be valued, the parties retained the services of Norman, Townsend & Johnson, LLC., for which Buck paid \$17,366. Buck is entitled to a credit for that amount in the final financial settlement between the parties.

69. Because the home of the parties needed to be valued, the parties retained the services of Denbow Appraising, for which Buck paid \$400. Buck is entitled to a credit for that

amount in the final financial settlement between the parties.

70. Because the business valuation required a real estate appraisal of the property of BASCO, Mr. Townsend retained the services of Jerry R. Webber, a real estate appraiser, for which Buck paid \$5,000. Buck is entitled to a credit for that amount in the final financial settlement between the parties.

71. At a hearing on temporary orders held in February 2004, the court ordered Buck to pay alimony to Cindy in the monthly sum of \$3,250.

72. Though he lagged behind during certain periods during the spring and summer of 2005, at the time of trial Buck was current on all ordered alimony payments to Cindy.

73. Prior to the temporary order hearing in February 2004, Buck paid all of the utilities on the home that Cindy resided in, the monthly interest expense on the home equity loan, all of the car payments for the vehicle which Cindy drove and for the vehicle which the parties' daughter, Cherice, drove. Additionally, during the time prior to the February hearing Buck paid Cindy \$300 per month.

74. Cindy now claims that she is entitled to have alimony ordered for the time prior to the February 2004 temporary order hearing at a rate greater than the amount which Buck was voluntarily paying to Cindy.

75. While she claims an entitlement to alimony for the period before the temporary order hearing, the record is clear that without order or direction, Buck paid significant sums to Cindy and for her benefit during the approximately ten months between the separation of the

parties and the temporary order hearing.

76. Secondly, during this same time Cindy was incurring significant credit card debt. Though she may claim that she did so in order to meet basic living expenses, any such claim is incorrect. During this period Buck paid the utilities for the home, paid interest on the home, paid for Cindy's vehicle, together with insurance thereon and he gave her \$300 per week, or \$1,200 per month in cash. Further, while it is true Cindy incurred significant credit card debt during this time, that debt was not for necessities. Rather, she incurred debt for extensive purchases for luxury-type clothing items, such as hundreds of dollars of goods at Victoria's Secret, hundreds of dollars of make up and related products, and hundreds of dollars in other clothing. All of this demonstrates that Cindy's essential needs were being met by the payments made by Buck on her behalf.

77. As well, during the marriage Cindy regularly and consistently abused the credit cards which she obtained. More than once during the marriage Buck paid off all of Cindy's credit cards, in the amounts of many thousands of dollars, and then he refused to allow her to have credit cards. Notwithstanding his direction, Cindy would obtain new cards and soon would become delinquent in dealing with her credit card debt.

78. Cindy next claims that the court set her temporary alimony too low. She wishes to have the court make a significant, retroactive, upward adjustment to the alimony fixed at the temporary order hearing.

79. During the period after entry of the temporary order and until the time of trial,

Buck paid Cindy alimony as ordered at the temporary order hearing of \$3,250 per month. Additionally, Buck paid the interest on the home equity loan on the home that Cindy lived in of between \$1,700 and \$1,900 per month. Finally, during most of this period Buck also paid nearly \$300 per month for Cindy's health insurance premium. Thus, since the temporary order of February 2004, Buck has paid to Cindy or for her direct benefit about \$5,350 per month.

80. Additionally, during the separation and after the divorce of the parties Buck paid the property taxes on the marital home in which Cindy resides in the sum of \$6,227, and paid insurance on the home in the sum of \$1,470. These payments were in the nature of alimony. When amortized over 24 months, this results in Cindy receiving approximately \$320 more in temporary alimony than the \$5,350 set forth above, or approximately \$5,670.

81. Given the nature of the payments which Buck made, which were all of the payments for her housing, her health insurance, and an additional \$3,250 in cash support per month, it is not appropriate that the court modify Cindy's alimony on a retroactive basis for the period after the temporary order hearing and before this trial.

82. Cindy wants a permanent award of alimony in this case. Any decision of permanent alimony must be factored on the length of the parties' marriage. They married in August 1974 and separated in April 2003, a period of over 28 years.

83. The issue of termination of alimony, based on the claim that Cindy was cohabiting, was heard at trial in the fall of 2005. At that time I concluded that, though Cindy admittedly was engaged in a sexual relationship with Harley Bradbury, the two were not living in

such a relationship that termination of alimony was required.

84. While I concluded that alimony must continue, it nonetheless was clear then that Cindy was engaged in relationship with Mr. Bradbury that bordered on cohabiting.

85. While this is not the kind of fault that would justify departing from the usual requirement to determine an award of alimony based on duration of the marriage, need and ability to pay, I simply cannot overlook the fact that Cindy has been engaged in a significant, ongoing, sexual relationship with Mr. Bradbury and that this fact must be measured and considered in determining alimony in this case.

86. During the marriage of the parties Buck has been the sole provider for the family. In his construction business he has made a very good income.

87. For calendar year 2002, the year before the separation of the parties, the parties filed a tax return which included \$170,209 in adjusted gross income. That amount included \$11,000 paid to Cindy as a director of KBR and \$10,108 which was income to Buck from BASCO. When those are subtracted, Buck had gross income from operating KBR in the sum of \$149,101.

88. For calendar year 2003, the year of the separation of the parties, Buck and his new wife filed a tax return which included \$193,883 in adjusted gross income. That amount included \$31,269 in W-2 and other income for Lynette (including \$2,750 as a director of KBR) and \$29,300 which was income to Buck from BASCO. When those are subtracted, Buck had gross income from operating KBR in the sum of \$138,314.

89. For calendar year 2004, Buck and his new wife filed a tax return which included \$204,893 in adjusted gross income. That amount included \$51,989 in W-2 and other income for Lynette (including \$31,000 as a director and advertising consultant for KBR) and \$30,219 which was income to Buck from BASCO. When those are subtracted, Buck had gross income from operating KBR in the sum of \$122,685.

90. During calendar year 2005 Buck received paychecks and other wage disbursements from KBR in the gross sum of \$310,410. Of this, \$63,550 was used by Buck to repay loans which he had borrowed from KBR. Though he used this sum to repay indebtedness to KBR, because Buck is given credit for the marital debt to KBR existing at the time of the divorce, it is not appropriate for him to receive a further credit for loan repayments to KBR. Thus, I do not discount his 2005 income because of the portion of those funds used to repay KBR indebtedness.

91. During her marriage to Buck, Cindy was paid a director fee by KBR. Now that Buck is married to Lynette, she is paid a director fee. As well, Lynette also is paid a fee for certain advertising services which she provides to KBR. Each of these are recognized by KBR, by Buck, by his partner Mr. Cardin, and by the IRS as income of Cindy or Lynette. Though, as Cindy noted, Mr. Cardin and Buck have attempted to make certain that each year the total income paid to one of them and that partner's spouse was equal to the total income paid to the other partner and spouse, that does not change the fact that wives of the partners were paid a director fee (and in Lynette's case, a fee for advertising services). The amount of these payments

to the wives represents their separate contributions to KBR and therefore must not be included in Buck's income used to determine the amount of and from which alimony is paid.

92. Because I have charged Buck for the amount of the BASCO income which Buck received in the last several years, it is not appropriate that the BASCO income be considered as part of Buck's income for purposes of calculating alimony.

93. Buck's aggregate income for calendar years 2002, 2003 and 2004 is \$410,100, or an annual average of \$136,700. In 2005 he had income of \$310,410. For the four year period of 2002-2005 he had aggregate income of \$720,510, or an annual average of \$180,127.

94. In addition to the foregoing facts concerning Buck's income, in August 2003 Buck applied for a loan and reported income of \$170,000 per year, and in July 2004 Buck applied for a loan and reported income of \$18,500 per month or \$222,000 per year.

95. Taken together, I conclude that for purposes of fixing alimony, Buck has the capacity of earning not less than \$150,000 per year. I arrive at this conclusion because for three of the four years at issue Buck's average annual income from KBR has been \$136,000. There is no evidence that the unusually large income in 2005 will be repeated and a significant portion of that income was distributed so that Buck and his partner could retire some of their indebtedness to KBR.

96. During the last two years Buck has paid Cindy alimony of \$3,250 per month, or \$39,000 per year. Additionally he paid the payments on the home equity line, paid insurance and paid real property taxes and insurance. He thus made total payments of alimony or in the nature



of alimony in the sum of \$5,670 per month or \$68,040 per year.

97. As noted above, at the time of the parties' separation Buck owed KBR \$87,325. Since the separation that indebtedness has increased to \$216,347. Then, also as noted above, in late 2005 Buck made a payment to reduce that debt of \$63,550, leaving a present indebtedness which he owes to KBR of \$189,796. Thus, during the time since the separation of the parties Buck's indebtedness to KBR has increased by the sum of \$102,471.

98. In addition to borrowing from KBR, during the same time Buck has made additional draws on the home equity line of \$122,412. Of that, Buck used \$83,689 as a part of the down payment for his new home. He thus received \$38,723 in funds not used for his new home.

99. After the separation of the parties Buck has seen his debt, not counting debt for his new home, increase by more than \$140,000. During that same time, however, Buck has paid attorney's fees, including fees for Cindy, of over \$170,000. Thus, this borrowing has not been available for the payment of alimony. As well, during that same time Buck faithfully fulfilled his obligations to pay alimony and payments in the form of alimony and child support of more than \$140,000. Through attorney's fees or alimony payments Cindy has been the direct recipient of much of the money which Buck borrowed during the separation of the parties.

100. In attempting to determine an appropriate level of permanent alimony in this case, the most persuasive evidence is the amount of alimony and payments in the form of alimony which Buck made under the temporary order, as moderated by the amount of debt which he had

to incur to make those payments, coupled with the income which Buck received from KBR as reported on his tax returns.

101. Cindy has never worked much during the marriage and does not have skills to earn significant income for her self-support. Thus she needs alimony. During the pendency of this proceeding, and after the entry of the temporary order, Cindy has received financial assistance from Buck in the sum of \$5,670 per month. Other than payment of her attorney's fees, she has been able to meet most or all of her living expenses with this level of alimony.

102. In addition to considerations of Cindy's need and Buck's ability to pay, alimony also should be based on preserving, to the extent possible, the standard of living which the parties enjoyed during the marriage. In this case they enjoyed an excellent standard of living during the marriage, including living in a beautiful home and enjoying a trailer and four-wheelers. Cindy is entitled, to the extent possible to retain that life style after the marriage alimony is one vehicle to make that happen.

103. In this case an alimony award of \$4,000 per month (\$48,000 per year) will represent 32% of Buck's gross income capacity as set forth above. As well, it will allow payment by Cindy of the obligations which she is obligated to undertake in this matter. And it will allow Cindy still to have funds available to meet her reasonable ongoing living expenses. It is appropriate that alimony be fixed in the sum of \$4,000 per month, to terminate on Cindy's remarriage, her cohabiting with a male, the death of either party, Buck's permanent disability, or 28 years, which ever comes first.

104. Until such time as Cindy sells the Lehi home or refinances it, Buck may make the interest or mortgage payments on the home that Cindy is obligated to pay and deduct those payments from his alimony obligation so that his credit will not be impaired by any failure of Cindy to make timely payment.

105. While it is true Cindy seeks an award of alimony in the sum of \$7,500, which she asserts is approximately one-half of Buck's annual income, fixing alimony at a higher level than as set forth here results in a penalty to Buck and a windfall to Cindy. In this matter, while she claims to have been victimized by Buck, the only significant evidence of fault that I have observed has been Cindy's near cohabitation. I have not seen any other significant fault. Thus, if I err, I err on Buck's behalf as Cindy is the one who has turned up the flames during the period after separation and before this trial by her open flaunting of her relationship with Mr. Bradbury while continuing to demand alimony.

106. The parties have the right to claim the children as dependents for tax purposes. Both wish the award to them of the tax dependency exemptions. In this case, because Buck is the primary custodial parent, he provides the lion's share of the financial support for the children (and will do so for Cindy). He has a need for these exemptions. They should be awarded to him.

107. Buck has a life insurance policy which has a face value of \$2 million. Because of the award to Cindy of a significant award of alimony, during all times that Buck is obligated to pay alimony, Cindy is entitled to be named as beneficiary under that policy for an undivided \$750,000 of its policy limits.

108. During this case each of the parties has incurred attorney's fees. The collective amount of those attorney's fees is astronomical. Each seeks an award of attorney's fees from the other.

109 Buck incurred attorney's fees and costs to J. Grant Moody in the sum of \$45,115. He thereafter incurred attorney's fees and costs to Douglas Thayer in the sum of \$105,715.

110. Cindy incurred attorney's fees and costs to Kevin Bond in the sum of \$5,000, though Buck paid those fees. Additionally Cindy incurred attorneys fees and costs to Steven Tycksen in the sum of \$88,231. Of this amount Buck has paid \$15,000.

111. The outcome in this case, while having taken a significant amount of time for the court to prepare, is based on a relatively simple structure. The court's duty has been to award each party a reasonable and equitable share of the marital assets and make certain that each party has funds for ongoing support. I am convinced that counsel would have been well advised to have demanded mediation rather than the expenditure of over \$244,000 in collective attorney's fees and costs in this case. The result in this case is neither particularly out of the ordinary nor unpredictable. With that, the parties should have found a mechanism to resolve their dispute short of the payment of nearly a quarter million dollars to lawyers.

112. While I confess the aggregate amount of these attorney's fees is staggering, with only some exceptions these attorney's fees were reasonably and necessarily incurred. Those exceptions include time spent with counsel verifying and following up on alleged violations of prior court orders, such as the infamous videotaping trip. As well, much of the preparation for

the fall trial, which at first was going to include trial on the issue of custody, was unnecessary as the issue of custody was not really in doubt once the custody evaluation was prepared. Indeed, in the end Cindy stipulated to an award of custody to Buck.

113. Both sides claim to have prevailed on issues or at specific hearings. Cindy claims to have prevailed at the trial on the issue of termination of alimony. While she prevailed, her victory is at best Pyrrhic. True, I concluded that she still is entitled to receive alimony. However, that trial, and Cindy's admitted, open, sexual relationship with Mr. Bradbury so inflamed this case that many, many other issues were litigated more vigorously and with tremendously greater cost than may have been necessary if she had not claimed alimony while having a well-known, open sexual relationship with Mr. Bradbury.

114. Both sides have prevailed on some of their issues. It is nearly impossible to determine which side has been the more successful. I decline to make an award of attorney's fees on the basis of who prevailed at one or more hearings.

115. Neither party can afford to pay the attorney's fees of the other. Buck has already borrowed extensively to finance this litigation and alimony. Cindy has essentially mortgaged her future receipts from BASCO or her alimony to fund this litigation. Neither has any funds available to pay the fees of the other.

116. Because neither has the ability to pay the fees of the other, I decline to award either party attorney's fees as against the other.

117. The parties agree that Cindy should pay child support in the sum of \$148 per

month. As well, it is appropriate that the provisions of title 78-45-1, *et seq.*, having to do with payment of expense for the children, including medical expenses, should govern in this case.

118. Each party wants a finding of contempt as against the other. As though enough other issues have not needed the attention of the court in this case, in the contentious spirit that has pervaded so much of what has occurred between these parties over the last year, both want me to find that the other has violated orders of the court, and each wants me to sanction or punish the other. Having considered the evidence on these matters, I find that the facts set forth in paragraphs 121 through 132 have been proven by clear and convincing evidence:

119. In two prior orders of the court, after the parties agreed to change custody of the children from Cindy to Buck, the court directed that Cindy return to Buck essentially all of the children's clothing and toys.

120. Cindy claimed that she gave essentially all of the clothes and toys to Buck while he asserted that she had not done so.

121. In mid-December 2005, after a contentious hearing on this issue, I directed that the parties immediately leave the courthouse and go and videotape the contents of each of their homes so that a record of what was where would be produced.

122. The videotape of the contents of Cindy's home demonstrates that she retained in the bedrooms of Chaz and Kenzie a significant amount of their clothes and other items. Her having retained these items of the children was in direct contravention of at least two prior directives of the court. Nor can Cindy claim she did not understand what the court was requiring.

The issue of the children's clothing was the repeated focus of hearings in this court and my instructions were clear.

123. Cindy asserted that all she retained were the children's old clothes, essentially DI items. Simply put, she was not honest. Rather, at the time of the videotaping of the children's bedrooms and closets in her home, many weeks after the change of custody, the closets still were full of clothes of the children, not DI items.

124. Cindy understood the directions of the court and she had the capacity to comply. Instead, however, she chose to make her own decision about what clothes and toys should be delivered to Buck as the custodial parent. In so doing Cindy ignored the direction and order of the court.

125. Cindy is in contempt of the orders of the court because of her failure to deliver to Buck the clothes and toys of the children that she was directed to deliver.

126. Buck also asserts that Cindy is in contempt of court because of an incident involving a cell phone. I do not find contempt arising out of this incident.

127. Cindy asserts that Buck is in contempt of court because she asserts he has failed to make timely payments, he was fraudulent in the way he dealt with his monetary obligations to her and he disobeyed the court's orders not to dissipate marital assets. I do not find contempt arising out of any of these allegations (and I note that in her own way, Cindy was as profligate as Buck was post-separation).

128. Payment of monetary sanctions is not appropriate in this matter as each of the

parties has incurred significant attorney's fees, all of which will reduce their separate capacities to respond to monetary sanctions. As well, monetary sanctions will not help Cindy focus on the wrongfulness of her conduct. Another sanction must be imposed.

129. While jail is an alternative, it is a poor alternative. Jail costs the taxpayers of this county. Other than the penal effect of having personal liberty restricted, it does little to help a person change behavior. I decline to impose a jail sentence as a sanction for contempt of court.

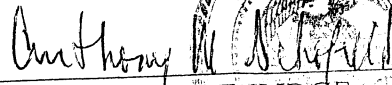
130. Meaningful community service may assist Cindy in focusing on her improper behavior while not costing the taxpayers money. In order to move past her contempt in this case Cindy must perform 80 hours of community service at the Food and Care Coalition of Utah County and she must do so within 60 days of the entry of an order in this matter. If the Food and Care Coalition is unable to use her community service on the schedule set forth, she must perform community service under the direction of the United Way of Utah County.

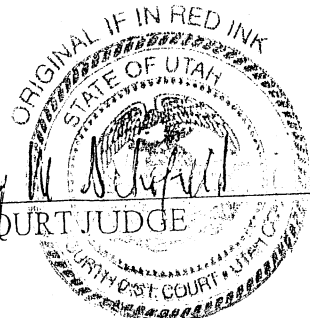
### **CONCLUSIONS OF LAW**

1. The court has jurisdiction over the parties of this action and the subject matter of this action.
2. That an Amended Decree of Divorce should enter effective upon being signed by the Court and entered by the Clerk.
3. That said Amended Decree of Divorce should be in conformance with the foregoing Findings of Fact.



DATED this 27 day of July, 2006.

  
DISTRICT COURT JUDGE



Approved as to form:

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Steven Tycksen  
Attorney for Respondent

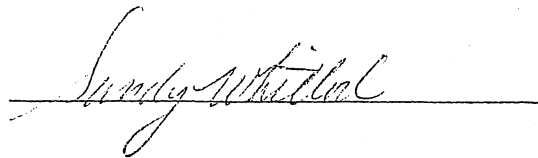
CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 26<sup>th</sup> day of <sup>July</sup>~~June~~, 2006 she caused a true and correct copy of the foregoing Findings of Fact and Conclusions of Law to be delivered to the following:

Steven C. Tycksen  
Zoll & Tycksen, LC  
5300 South 360 West, Suite 360  
Murray, Utah 84123

Sent Via:

☐ Hand-Delivery  
☐ Facsimile  
☒ Mailed (postage prepaid)

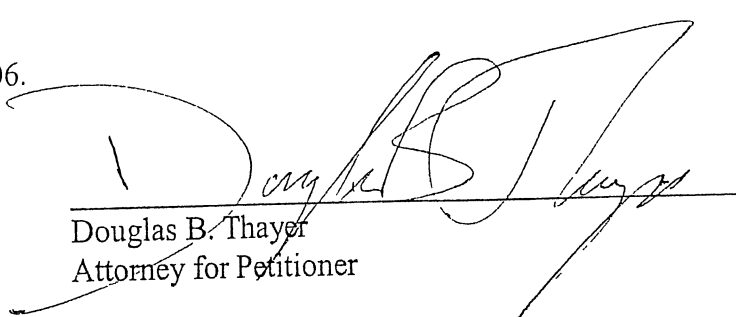


**NOTICE OF INTENT TO SUBMIT FOR SIGNATURE**

TO: STEVEN C. TYCKSEN, ATTORNEY FOR RESPONDENT:

You will please take notice that the undersigned attorney for the Pctitioner will submit the above and foregoing Amended Findings of Fact, Conclusions of Law and Amended Decree of Divorce to the Court for signature upon the expiration of five (5) working days from the date of this notice, plus three (3) days for mailing, unless written objection is filed prior to that time pursuant to Rule 4-504 of the Utah Rules of Judicial Administration.

DATED this 6<sup>th</sup> day of July, 2006.



Douglas B. Thayer  
Attorney for Petitioner

# **EXHIBIT C**

FILED  
Fourth Judicial District Court  
of Utah County, State of Utah  
6/16/06  
Deputy

**IN THE FOURTH JUDICIAL DISTRICT COURT  
UTAH COUNTY, STATE OF UTAH**

KEVIN "BUCK" ROBINSON,  Petitioner,  vs.  CINDY ROBINSON,  Respondent.	CASE NUMBER: 034401310  DATED: JUNE 16, 2006  <b>RULING</b>  ANTHONY W. SCHOFIELD, JUDGE
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This case is before the court after trial held March 21, and 22, 2006. Oral argument on the trial was held April 10, 2006. I now issue this ruling resolving the financial issues and the few other issues existing between the parties.

**Findings of Fact**

I find that the following facts have been proven by a preponderance of the evidence:

1. The parties married in August 1974 and separated approximately April 1, 2003.
2. Cindy was served with a petition in this matter. On September 5, 2003, after she did not answer the petition, Buck obtained a decree of divorce.
3. Subsequently all of the provisions of that divorce decree except the divorce itself were set aside. Thus after September 2003 the parties needed to resolve custody of the children and their support, alimony, property distribution and assignment of debts.

4. In the fall of 2005 the parties stipulated that Buck would be awarded custody of the children and they stipulated to a visitation schedule. Thus, essentially all that remains for decision now is the financial issues of the marriage.

5. Buck is a 50% stockholder in KBR Systems, Inc.

6. Though he is a 50% stockholder, the stock which Buck owns is a marital asset.

7. KBR is a small, though profitable and apparently well-run, construction company.

There are two shareholders, Buck and his partner Steven Cardin.

8. As of April 30, 2003, the most recent accounting before the September 2003 divorce date, KBR had an adjusted stockholders equity of \$1,287,516.

9. As between them, Buck and Mr. Cardin agreed in a buy-sell agreement that in the event of death of either, the other could buy out the deceased partner's estate by paying 125% of this stockholders equity.

10. Buck and Mr. Cardin also agreed that in the event of an involuntary dissolution of the company that the buy-out amount would be fixed at stockholders equity without any premium or discount.

11. In this action Buck now asks that the court fix the value based on stockholders equity with a discount because any acquiring party would not have effective control of the company and a separate discount because of the lack of marketability of the company.

12. Among the issues which directly impacts KBR's marketability are that it lacks diversification and is heavily dependent on the economic outlook in the construction industry; it relies heavily on its key managers, so loss of either Mr. Cardin or Buck could significantly impact its ability to generate cash flow and income as it has in the past; the company operates

primarily in Utah and Nevada, and thus, its business is dependent upon the continued strength of the construction market in those two states; and, finally, given its size, the company cannot expect to obtain financing without the personal guarantees of Buck and Mr. Cardin.

13. Each of these factors has a direct and significant impact on the true value of the business.

14. The discount for lack of control also is based in fact. Without the direct and ongoing input and daily involvement of the two shareholders, the company would have significantly less value. Indeed, without their direct involvement the company likely would fold.

15. The ongoing success of KBR is directly dependent upon the continued involvement of Buck and Mr. Cardin in its operation and in the solicitation and performance of construction contracts.

16. The business valuator, Mr. Townsend, applied a numerical percentage discount based on these two discounts. The aggregate discount which he imposed is a discount of 27%.

17. In his analysis, Mr. Townsend concluded that the proper value of the company, based on book value with discounts for lack of control and lack of marketability, is \$944,856.

18. Mr. Townsend admitted that he arrived at the percentage amount of the discounts himself, that there is no set formula for arriving at these amounts, but that using his best, professional judgment, the aggregate discount of 27% is appropriate.

19. As noted above, as between themselves, Mr. Cardin and Buck agreed that in the event of an involuntary transfer, and certainly this divorce would constitute such an involuntary transfer, the appropriate buy out price would be book value without either discount or premium.

20. Now, however, Buck asks that the court accept the two discounts that Mr.

Townsend suggests.

21. Mr. Townsend testified at length at trial. Distilled to its essence, it seemingly appears he picked the amounts of the two discounts out of the air. While he gave a rationale for the imposition of the two discounts, he did not provide any meaningful basis for his choice of the amounts of the two discounts. Indeed, he conceded that he himself selected the amounts of the two discounts.

22. Because he did not provide reasons for his selection of the amounts of the discounts which he applied in this case, I am not willing to accept his decisions of the discount amounts whole cloth.

23. On the other hand, Buck previously agreed with his partner that in the event of an involuntary dissolution book value would control. It can be argued with fair persuasion that to give to his partner a greater potential recovery than his ex-spouse is patently unfair.

24. Recognizing that the business is so dependent upon Buck and Mr. Cardin and because of the factors set forth above which demonstrate that both lack of control and lack of marketability have a direct, significant impact on the value of the company, simply utilizing book value also is inappropriate.

25. In my view, the discounted value proposed by Mr. Townsend represents the lowest possible figure that the court can use in fixing the value of this marital asset while book value represents the highest possible figure that the court can use.

26. If there is to be error in this matter, that error should be in Cindy's favor, as, by the award of the stock in KBR to Buck, she is being divested of any claim to one of the two largest income generating assets of the marriage. She should only be divested of her interest in



exchange for a fair value.

27. It is not appropriate simply to split the difference between book value and Mr. Townsend's discounted value. Rather, I am convinced that a fair valuation would be two-thirds of the way between Mr. Townsend's discounted value and book value.

28. The two-thirds point between book value and discounted book value is \$1,173,296. I fix the value of KBR, as of September 5, 2003, in that amount.

29. Buck's one-half interest in KBR thus is worth \$586,648.

30. Buck also is a 50% interest holder in BASCO, LLC, a land holding company whose primary asset is the business building and property from which KBR Systems operates its business. KBR leases this property from BASCO.

31. Buck's interest in BASCO also is a marital asset.

32. The business of BASCO is largely a passive business. BASCO owns two properties. One is the property which KBR rents from BASCO as a location from which to operate its business. This property is encumbered by certain mortgage debts. Essentially all that BASCO is obligated to do with respect to this property, and as a result of its lease to KBR, is to collect the rents and pay the mortgage debts and real property taxes.

33. BASCO owns a second property which requires only the same level of involvement in its maintenance.

34. The net asset value of BASCO, as of September 5, 2003, was fixed by Norman, Townsend & Johnson, LLC, at \$515,750.

35. Because BASCO's business does not require any significant management or oversight from either Buck or Mr. Cardin, the discounts from value that Mr. Townsend applied in

determining a recommended value to the court for purposes of this marital dissolution are not proper. True, under the decision here made, Mr. Cardin now will have Cindy as his partner in BASCO rather than Buck, but the effort necessary to continue the operation of the business with Cindy as a partner rather than Buck will not be any different than now existing.

36. As Buck is a 50% owner of BASCO, the net asset value of his one-half interest in BASCO is \$257,875.

37. There is no persuasive reason to discount the net asset value set forth above and I decline to do so. The value of Buck's one-half interest in BASCO, as of September 5, 2003, is fixed at \$257,875.

38. In order to reduce the amount of ongoing connection between Buck and Cindy hereafter, Buck's entire interest in BASCO should be awarded to Cindy.

39. At the time of the divorce in 2003 Buck and Cindy owned a home in Lehi, Utah, which had a value of \$550,000. As of April 1, 2003, there was owing on the home a mortgage to National City Mortgage with a balance of \$317,119.

40. On or about April 1, 2003, Buck refinanced the National City Mortgage loan and replaced it with a home equity loan from Wells Fargo. That loan had an initial balance, including refinance fees, of \$319,445.

41. Applying the \$319,445 balance due National City Mortgage against the home value of \$550,000 results in an equity in the home of \$230,555. The value of the home and this loan amount each should be accounted for in the final financial settlement between the parties.

42. After their separation, Buck moved from the home while Cindy continued to reside in it. It is appropriate the Cindy be awarded the home and the obligation to pay the debt of

\$319,445 thereon.

43. After the September 2003 divorce Buck remarried and he and his new wife, Lynette, have obtained a new home. Though Cindy claims she should share in any equity in this home, this is a post-divorce acquisition and both the home and any debt thereon are the sole property and responsibility of Buck.

44. At the time of separation the parties had \$25,985 in a marital checking account.

45. Buck was the sole signer on the checking account and he kept those proceeds. He is entitled to do so, but must be charged for that amount in the final financial settlement between the parties.

46. At the time of the divorce the parties owned a travel trailer. Buck sold the travel trailer and kept the cash therefrom. He received \$18,000, which was its fair value. He must be charged for that amount in the final financial settlement between the parties.

47. At the time of the divorce Cindy owned a 401(k) retirement account having a value of \$2,561. This account should be awarded to Cindy and she must be charged for that amount in the final financial settlement between the parties.

48. At the time of the divorce Buck owned a 401(k) retirement account having a value of \$95,929. Buck agrees that a QDRO be issued with respect to this account, thus benefitting each party equally.

49. In 1996 Buck's parents sold Buck a parcel of ground in Pleasant Grove for \$37,000, of which he paid \$7,000 down and was obligated to pay three annual payments of \$10,000 each. Buck paid the initial down payment but failed to make any of the other payments. Thereafter Buck's mother, Nelda Robinson, forfeited the contract and Buck lost any claim to this

property. Cindy now asserts that she has a marital interest in this parcel. Rather, however, any marital interest in the property, indeed any interest in the property, was forfeited many years before the parties' separation. Neither party has any present interest in this parcel.

50. The personal property of the parties has been divided. That division is generally appropriate; however, Cindy asserts that the division of personal property results in Buck receiving considerably more value than she received. The following adjustments with respect to the personal property of the parties are appropriate:

51. Exhibit 69 is Cindy's list of the personal property distribution, including values. All of the personal property which relates to the furniture in a particular child's bedroom should be awarded to that child and should be kept by that child in the primary residence of the child. For example, on page one of exhibit 69, after the title "Kenzie Bed room" two dressers, a bench, two end tables, a green tree, a tv/vcr combo and a lamp are listed. These all should be given to Kenzie and their value subtracted from the reconciliation. Similar adjustments should be made for the items under the titles: "Cabree play room downstairs", "Kids toy room", "CaBree bedroom" and "Chaz room". The total value for all of these items is \$3,180. That amount should be subtracted from Cindy's side of the ledger in arriving at a financial reconciliation on the personal property items. This is because each of these items is treated as belonging to the child and not to either of the parents.

52. Cindy included a large number of items on Buck's side of the ledger which he acquired after he separated from Cindy. Most of these were purchased for his new home with Lynette or were Lynette's which she brought to her marriage to Buck. All of these items should be removed from Buck's side of the ledger as they are not marital property. This list includes 3

shop vacuums, 2 kids go-carts, dutch oven cook ware, Buck's bedroom set from 6/03, Oreck vacuum, rocking chair, leather sofa set, barbeque and 2 large silk trees. The total value for all of these items is \$12,050. That amount should be subtracted from Buck's side of the ledger in arriving at a financial reconciliation on the personal property items.

53. Cindy included two items on Buck's side of the ledger which belong to KBR, propane heaters 2 each large, and chop saw. These items should be removed from Buck's side of the ledger as they are not marital property. The total value of these items is \$800 . That amount should be subtracted from Buck's side of the ledger in arriving at a financial reconciliation on the personal property items.

54. Cindy included in the list a large number of items on Buck's side of the ledger which she overvalued. She overvalues her diamond ring by \$7,800, Buck's guns by \$2,800 (he bought approximately one-half of them post-separation), the pictures and decorations which Buck took by \$500 (she charges him significantly more for these items than she valued the similar items which she retained), lawn mowers by \$300 (Lynette brought one of the law mowers to her marriage), two 27 inch tvs by \$300 (Buck only took one), three large wreaths by \$170 (Buck only took one, not three). The total value to be removed on account of Cindy's overvaluing for all of these items is \$11,870 . That amount should be subtracted from Buck's side of the ledger in arriving at a financial reconciliation on the personal property items.

55. Cindy included on the list as being in Buck's possession three items which he left in Cindy's home in Lehi. These are the air conditioning covers, the camping and fishing gear, and the bow and arrows. The total value of these items is \$3,250. These items should be removed from Buck's side of the ledger and added to Cindy's side of the ledger in arriving at a

financial reconciliation on the personal property items.

56. Finally, Cindy included in the ledger several items which Buck did not take from her home in Lehi, including wicker outside patio set, 32 inch color tv, white Ford Taurus and horse tools and tack. The total value of these items is \$2,100. These items should be removed from Buck's side of the ledger and added to Cindy's side of the ledger in arriving at a financial reconciliation on the personal property items.

57. Cindy valued all of the items on her side of the ledger at \$21,350. She valued all of the items on Buck's side of the ledger at \$50,005. With the foregoing adjustments Cindy's side of the ledger should increase to \$23,520 while Buck's side of the ledger should decrease to \$19,935.

58. After the parties separated, indeed, after entry of the divorce, Buck bought a Ford Taurus automobile for Cindy at a cost of \$8,484. Though purchased post-divorce, this vehicle constitutes a marital asset and its value must be included in the final financial reconciliation between the parties.

59. The parties' adult daughter Cherice was driving a vehicle on which Buck was making the payments. Though Buck claims those payments should be charged against Cindy, this is in error as Buck made the decision to allow Cherice to drive the vehicle. Indeed, it appears he purchased the vehicle for Cherice as a birthday present.

60. While driving the vehicle, Cherice wrecked the vehicle. Buck made arrangements to have it repaired. Buck paid for this repair. The insurance company issued a check in the amount of \$1,044 to cover the repairs, which check was payable to Buck. Cindy took the check, forged Buck's signature, and cashed the check. Buck is entitled to a credit in that amount in the

final financial reconciliation between the parties.

61. During calendar years 2003 and 2004 Buck received distributions from BASCO. These distributions were in addition to the salary and other payments which he received from KBR. In 2003 Buck received a distribution of \$20,000, and in 2004 he received a distribution of \$15,000. Because these payments were made to the members/owners of BASCO, they were distributions of marital assets and should be accounted for in the final financial reconciliation between the parties.

62. As of September 2003, the parties owed a debt to KBR, for a loan from KBR to Buck which was a loan made for marital purposes, in the sum of \$87,325. Buck has paid this loan post divorce, but should receive a credit for it in the final financial settlement between the parties.

63. At the time of the parties' separation, they owed \$319,445 on a home equity loan on their home. This was the only mortgage indebtedness on their home. This loan was a marital obligation.

64. As noted above, Cindy will be awarded the marital home. Because she is awarded the home it is proper that she should be required to pay the home equity loan debt that existed at the time of the separation of the parties in the sum of \$319,445.

65. After April 1, 2003, Buck incurred additional debt on the home equity line. Buck must repay all of the home equity loan debt on the home incurred after April 1, 2003.

66. Further, because the continuation of this loan will result in the continued financial entanglement of the parties, it is appropriate that within one year from the date hereof Cindy either sell the home or refinance it. Buck must fully cooperate with this, including refinancing

that portion of the home equity loan that he is obligated to repay.

67. At the time of the separation of the parties Cindy had credit card debt in the sum of \$22,552. Though during the marriage Buck continually tried to convince Cindy not to incur credit card debt, this debt was incurred pre-separation and thus is marital debt. Cindy should be assigned repayment of this debt and it should be included in the final financial reconciliation between the parties.

68. Shortly before the separation Cindy incurred \$3,000 on a line of credit which Buck subsequently paid. Because this obligation was incurred pre-separation it is a marital obligation. Buck should be given credit for this payment in the final financial reconciliation between the parties.

69. The parties quarreled about custody of the children. In order to resolve that issue they obtained the services of Dr. Darren Featherstone, a custody evaluator, for which Buck paid \$5,500. Buck is entitled to a credit for that amount in the final financial settlement between the parties.

70. Because the business of the parties needed to be valued, the parties retained the services of Norman, Townsend & Johnson, LLC., for which Buck paid \$17,366. Buck is entitled to a credit for that amount in the final financial settlement between the parties.

71. Because the home of the parties needed to be valued, the parties retained the services of Denbow Appraising, for which Buck paid \$400. Buck is entitled to a credit for that amount in the final financial settlement between the parties.

72. Because the business valuation required a real estate appraisal of the property of BASCO, Mr. Townsend retained the services of Jerry R. Webber, a real estate appraiser, for



which Buck paid \$5,000. Buck is entitled to a credit for that amount in the final financial settlement between the parties.

73. At a hearing on temporary orders held in February 2004, the court ordered Buck to pay alimony to Cindy in the monthly sum of \$3,250.

74. Though he lagged behind during certain periods during the spring and summer of 2005, at the time of trial Buck was current on all ordered alimony payments to Cindy.

75. Prior to the temporary order hearing in February 2004, Buck paid all of the utilities on the home that Cindy resided in, the monthly interest expense on the home equity loan, all of the car payments for the vehicle which Cindy drove and for the vehicle which the parties' daughter, Cherice, drove. Additionally, during the time prior to the February hearing Buck paid Cindy \$300 per month.

76. Cindy now claims that she is entitled to have alimony ordered for the time prior to the February 2004 temporary order hearing at a rate greater than the amount which Buck was voluntarily paying to Cindy.

77. While she claims an entitlement to alimony for the period before the temporary order hearing, the record is clear that without order or direction, Buck paid significant sums to Cindy and for her benefit during the approximately ten months between the separation of the parties and the temporary order hearing.

78. Secondly, during this same time Cindy was incurring significant credit card debt. Though she may claim that she did so in order to meet basic living expenses, any such claim is incorrect. During this period Buck paid the utilities for the home, paid interest on the home, paid for Cindy's vehicle, together with insurance thereon and he gave her \$300 per week, or \$1,200

per month in cash. Further, while it is true Cindy incurred significant credit card debt during this time, that debt was not for necessities. Rather, she incurred debt for extensive purchases for luxury-type clothing items, such as hundreds of dollars of goods at Victoria's Secret, hundreds of dollars of make up and related products, and hundreds of dollars in other clothing. All of this demonstrates that Cindy's essential needs were being met by the payments made by Buck on her behalf.

79. As well, during the marriage Cindy regularly and consistently abused the credit cards which she obtained. More than once during the marriage Buck paid off all of Cindy's credit cards, in the amounts of many thousands of dollars, and then he refused to allow her to have credit cards. Notwithstanding his direction, Cindy would obtain new cards and soon would become delinquent in dealing with her credit card debt.

80. Cindy next claims that the court set her temporary alimony too low. She wishes to have the court make a significant, retroactive, upward adjustment to the alimony fixed at the temporary order hearing.

81. During the period after entry of the temporary order and until the time of trial, Buck paid Cindy alimony as ordered at the temporary order hearing of \$3,250 per month. Additionally, Buck paid the interest on the home equity loan on the home that Cindy lived in of between \$1,700 and \$1,900 per month. Finally, during most of this period Buck also paid nearly \$300 per month for Cindy's health insurance premium. Thus, since the temporary order of February 2004, Buck has paid to Cindy or for her direct benefit about \$5,350 per month.

82. Additionally, during the separation and after the divorce of the parties Buck paid the property taxes on the marital home in which Cindy resides in the sum of \$6,227, and paid

insurance on the home in the sum of \$1,470. These payments were in the nature of alimony. When amortized over 24 months, this results in Cindy receiving approximately \$320 more in temporary alimony than the \$5,350 set forth above, or approximately \$5,670.

83. Given the nature of the payments which Buck made, which were all of the payments for her housing, her health insurance, and an additional \$3,250 in cash support per month, it is not appropriate that the court modify Cindy's alimony on a retroactive basis for the period after the temporary order hearing and before this trial.

84. Cindy wants a permanent award of alimony in this case. Any decision of permanent alimony must be factored on the length of the parties' marriage. They married in August 1974 and separated in April 2003, a period of over 28 years.

85. The issue of termination of alimony, based on the claim that Cindy was cohabiting, was heard at trial in the fall of 2005. At that time I concluded that, though Cindy admittedly was engaged in a sexual relationship with Harley Bradbury, the two were not living in such a relationship that termination of alimony was required.

86. While I concluded that alimony must continue, it nonetheless was clear then that Cindy was engaged in relationship with Mr. Bradbury that bordered on cohabiting.

87. While this is not the kind of fault that would justify departing from the usual requirement to determine an award of alimony based on duration of the marriage, need and ability to pay, I simply cannot overlook the fact that Cindy has been engaged in a significant, ongoing, sexual relationship with Mr. Bradbury and that this fact must be measured and considered in determining alimony in this case.

88. During the marriage of the parties Buck has been the sole provider for the family.

In his construction business he has made a very good income.

89. For calendar year 2002, the year before the separation of the parties, the parties filed a tax return which included \$170,209 in adjusted gross income. That amount included \$11,000 paid to Cindy as a director of KBR and \$10,108 which was income to Buck from BASCO. When those are subtracted, Buck had gross income from operating KBR in the sum of \$149,101.

90. For calendar year 2003, the year of the separation of the parties, Buck and his new wife filed a tax return which included \$193,883 in adjusted gross income. That amount included \$31,269 in W-2 and other income for Lynette (including \$2,750 as a director of KBR) and \$29,300 which was income to Buck from BASCO. When those are subtracted, Buck had gross income from operating KBR in the sum of \$138,314.

91. For calendar year 2004, Buck and his new wife filed a tax return which included \$204,893 in adjusted gross income. That amount included \$51,989 in W-2 and other income for Lynette (including \$31,000 as a director and advertising consultant for KBR) and \$30,219 which was income to Buck from BASCO. When those are subtracted, Buck had gross income from operating KBR in the sum of \$122,685.

92. During calendar year 2005 Buck received paychecks and other wage disbursements from KBR in the gross sum of \$310,410. Of this, \$63,550 was used by Buck to repay loans which he had borrowed from KBR. Though he used this sum to repay indebtedness to KBR, because Buck is given credit for the marital debt to KBR existing at the time of the divorce, it is not appropriate for him to receive a further credit for loan repayments to KBR. Thus, I do not discount his 2005 income because of the portion of those funds used to repay KBR

indebtedness.

93. During her marriage to Buck, Cindy was paid a director fee by KBR. Now that Buck is married to Lynette, she is paid a director fee. As well, Lynette also is paid a fee for certain advertising services which she provides to KBR. Each of these are recognized by KBR, by Buck, by his partner Mr. Cardin, and by the IRS as income of Cindy or Lynette. Though, as Cindy noted, Mr. Cardin and Buck have attempted to make certain that each year the total income paid to one of them and that partner's spouse was equal to the total income paid to the other partner and spouse, that does not change the fact that wives of the partners were paid a director fee (and in Lynette's case, a fee for advertising services). The amount of these payments to the wives represents their separate contributions to KBR and therefore must not be included in Buck's income used to determine the amount of and from which alimony is paid.

94. Because I have charged Buck for the amount of the BASCO income which Buck received in the last several years, it is not appropriate that the BASCO income be considered as part of Buck's income for purposes of calculating alimony.

95. Buck's aggregate income for calendar years 2002, 2003 and 2004 is \$410,100, or an annual average of \$136,700. In 2005 he had income of \$310,410. For the four year period of 2002-2005 he had aggregate income of \$720,510, or an annual average of \$180,127.

96. In addition to the foregoing facts concerning Buck's income, in August 2003 Buck applied for a loan and reported income of \$170,000 per year, and in July 2004 Buck applied for a loan and reported income of \$18,500 per month or \$222,000 per year.

97. Taken together, I conclude that for purposes of fixing alimony, Buck has the capacity of earning not less than \$150,000 per year. I arrive at this conclusion because for three

of the four years at issue Buck's average annual income from KBR has been \$136,000. There is no evidence that the unusually large income in 2005 will be repeated and a significant portion of that income was distributed so that Buck and his partner could retire some of their indebtedness to KBR.

98. During the last two years Buck has paid Cindy alimony of \$3,250 per month, or \$39,000 per year. Additionally he paid the payments on the home equity line, paid insurance and paid real property taxes and insurance. He thus made total payments of alimony or in the nature of alimony in the sum of \$5,670 per month or \$68,040 per year.

99. As noted above, at the time of the parties' separation Buck owed KBR \$87,325. Since the separation that indebtedness has increased to \$216,347. Then, also as noted above, in late 2005 Buck made a payment to reduce that debt of \$63,550, leaving a present indebtedness which he owes to KBR of \$189,796. Thus, during the time since the separation of the parties Buck's indebtedness to KBR has increased by the sum of \$102,471.

100. In addition to borrowing from KBR, during the same time Buck has made additional draws on the home equity line of \$122,412. Of that, Buck used \$83,689 as a part of the down payment for his new home. He thus received \$38,723 in funds not used for his new home.

101. After the separation of the parties Buck has seen his debt, not counting debt for his new home, increase by more than \$140,000. During that same time, however, Buck has paid attorney's fees, including fees for Cindy, of over \$170,000. Thus, this borrowing has not been available for the payment of alimony. As well, during that same time Buck faithfully fulfilled his obligations to pay alimony and payments in the form of alimony and child support of more than

\$140,000. Through attorney's fees or alimony payments Cindy has been the direct recipient of much of the money which Buck borrowed during the separation of the parties.

102. In attempting to determine an appropriate level of permanent alimony in this case, the most persuasive evidence is the amount of alimony and payments in the form of alimony which Buck made under the temporary order, as moderated by the amount of debt which he had to incur to make those payments, coupled with the income which Buck received from KBR as reported on his tax returns.

103. Cindy has never worked much during the marriage and does not have skills to earn significant income for her self-support. Thus she needs alimony. During the pendency of this proceeding, and after the entry of the temporary order, Cindy has received financial assistance from Buck in the sum of \$5,670 per month. Other than payment of her attorney's fees, she has been able to meet most or all of her living expenses with this level of alimony.

104. In addition to considerations of Cindy's need and Buck's ability to pay, alimony also should be based on preserving, to the extent possible, the standard of living which the parties enjoyed during the marriage. In this case they enjoyed an excellent standard of living during the marriage, including living in a beautiful home and enjoying a trailer and four-wheelers. Cindy is entitled, to the extent possible to retain that life style after the marriage alimony is one vehicle to make that happen.

105. In this case an alimony award of \$4,000 per month (\$48,000 per year) will represent 32% of Buck's gross income capacity as set forth above. As well, it will allow payment by Cindy of the obligations which she is obligated to undertake in this matter. And it will allow Cindy still to have funds available to meet her reasonable ongoing living expenses. It

is appropriate that alimony be fixed in the sum of \$4,000 per month, to terminate on Cindy's remarriage, her cohabiting with a male, the death of either party, Buck's permanent disability, or 28 years, which ever comes first.

106. Until such time as Cindy sells the Lehi home or refinances it, Buck may make the interest or mortgage payments on the home that Cindy is obligated to pay and deduct those payments from his alimony obligation so that his credit will not be impaired by any failure of Cindy to make timely payment.

107. While it is true Cindy seeks an award of alimony in the sum of \$7,500, which she asserts is approximately one-half of Buck's annual income, fixing alimony at a higher level than as set forth here results in a penalty to Buck and a windfall to Cindy. In this matter, while she claims to have been victimized by Buck, the only significant evidence of fault that I have observed has been Cindy's near cohabitation. I have not seen any other significant fault. Thus, if I err, I err on Buck's behalf as Cindy is the one who has turned up the flames during the period after separation and before this trial by her open flaunting of her relationship with Mr. Bradbury while continuing to demand alimony.

108. The parties have the right to claim the children as dependents for tax purposes. Both wish the award to them of the tax dependency exemptions. In this case, because Buck is the primary custodial parent, he provides the lion's share of the financial support for the children (and will do so for Cindy). He has a need for these exemptions. They should be awarded to him.

109. Buck has a life insurance policy which has a face value of \$2 million. Because of the award to Cindy of a significant award of alimony, during all times that Buck is obligated to pay alimony, Cindy is entitled to be named as beneficiary under that policy for an undivided



\$750,000 of its policy limits.

110. During this case each of the parties has incurred attorney's fees. The collective amount of those attorney's fees is astronomical. Each seeks an award of attorney's fees from the other.

111 Buck incurred attorney's fees and costs to J. Grant Moody in the sum of \$45,115. He thereafter incurred attorney's fees and costs to Douglas Thayer in the sum of \$105,715.

112. Cindy incurred attorney's fees and costs to Kevin Bond in the sum of \$5,000, though Buck paid those fees. Additionally Cindy incurred attorneys fees and costs to Steven Tycksen in the sum of \$88,231. Of this amount Buck has paid \$15,000.

113. The outcome in this case, while having taken a significant amount of time for the court to prepare, is based on a relatively simple structure. The court's duty has been to award each party a reasonable and equitable share of the marital assets and make certain that each party has funds for ongoing support. I am convinced that counsel would have been well advised to have demanded mediation rather than the expenditure of over \$244,000 in collective attorney's fees and costs in this case. The result in this case is neither particularly out of the ordinary nor unpredictable. With that, the parties should have found a mechanism to resolve their dispute short of the payment of nearly a quarter million dollars to lawyers.

114. While I confess the aggregate amount of these attorney's fees is staggering, with only some exceptions these attorney's fees were reasonably and necessarily incurred. Those exceptions include time spent with counsel verifying and following up on alleged violations of prior court orders, such as the infamous videotaping trip. As well, much of the preparation for the fall trial, which at first was going to include trial on the issue of custody, was unnecessary as

the issue of custody was not really in doubt once the custody evaluation was prepared. Indeed, in the end Cindy stipulated to an award of custody to Buck.

115. Both sides claim to have prevailed on issues or at specific hearings. Cindy claims to have prevailed at the trial on the issue of termination of alimony. While she prevailed, her victory is at best Pyrrhic. True, I concluded that she still is entitled to receive alimony. However, that trial, and Cindy's admitted, open, sexual relationship with Mr. Bradbury so inflamed this case that many, many other issues were litigated more vigorously and with tremendously greater cost than may have been necessary if she had not claimed alimony while having a well-known, open sexual relationship with Mr. Bradbury.

116. Both sides have prevailed on some of their issues. It is nearly impossible to determine which side has been the more successful. I decline to make an award of attorney's fees on the basis of who prevailed at one or more hearings.

117. Neither party can afford to pay the attorney's fees of the other. Buck has already borrowed extensively to finance this litigation and alimony. Cindy has essentially mortgaged her future receipts from BASCO or her alimony to fund this litigation. Neither has any funds available to pay the fees of the other.

118. Because neither has the ability to pay the fees of the other, I decline to award either party attorney's fees as against the other.

119. The parties agree that Cindy should pay child support in the sum of \$148 per month. As well, it is appropriate that the provisions of title 78-45-1, *et seq.*, having to do with payment of expense for the children, including medical expenses, should govern in this case.

120. Each party wants a finding of contempt as against the other. As though enough

other issues have not needed the attention of the court in this case, in the contentious spirit that has pervaded so much of what has occurred between these parties over the last year, both want me to find that the other has violated orders of the court, and each wants me to sanction or punish the other. Having considered the evidence on these matters, I find that the facts set forth in paragraphs 121 through 132 have been proven by clear and convincing evidence:

121. In two prior orders of the court, after the parties agreed to change custody of the children from Cindy to Buck, the court directed that Cindy return to Buck essentially all of the children's clothing and toys.

122. Cindy claimed that she gave essentially all of the clothes and toys to Buck while he asserted that she had not done so.

123. In mid-December 2005, after a contentious hearing on this issue, I directed that the parties immediately leave the courthouse and go and videotape the contents of each of their homes so that a record of what was where would be produced.

124. The videotape of the contents of Cindy's home demonstrates that she retained in the bedrooms of Chaz and Kenzie a significant amount of their clothes and other items. Her having retained these items of the children was in direct contravention of at least two prior directives of the court. Nor can Cindy claim she did not understand what the court was requiring. The issue of the children's clothing was the repeated focus of hearings in this court and my instructions were clear.

125. Cindy asserted that all she retained were the children's old clothes, essentially DI items. Simply put, she was not honest. Rather, at the time of the videotaping of the children's bedrooms and closets in her home, many weeks after the change of custody, the closets still were

full of clothes of the children, not DI items.

126. Cindy understood the directions of the court and she had the capacity to comply. Instead, however, she chose to make her own decision about what clothes and toys should be delivered to Buck as the custodial parent. In so doing Cindy ignored the direction and order of the court.

127. Cindy is in contempt of the orders of the court because of her failure to deliver to Buck the clothes and toys of the children that she was directed to deliver.

128. Buck also asserts that Cindy is in contempt of court because of an incident involving a cell phone. I do not find contempt arising out of this incident.

129. Cindy asserts that Buck is in contempt of court because she asserts he has failed to make timely payments, he was fraudulent in the way he dealt with his monetary obligations to her and he disobeyed the court's orders not to dissipate marital assets. I do not find contempt arising out of any of these allegations (and I note that in her own way, Cindy was as profligate as Buck was post-separation).

130. Payment of monetary sanctions is not appropriate in this matter as each of the parties has incurred significant attorney's fees, all of which will reduce their separate capacities to respond to monetary sanctions. As well, monetary sanctions will not help Cindy focus on the wrongfulness of her conduct. Another sanction must be imposed.

131. While jail is an alternative, it is a poor alternative. Jail costs the taxpayers of this county. Other than the penal effect of having personal liberty restricted, it does little to help a person change behavior. I decline to impose a jail sentence as a sanction for contempt of court.

132. Meaningful community service may assist Cindy in focusing on her improper

behavior while not costing the taxpayers money. In order to move past her contempt in this case Cindy must perform 80 hours of community service at the Food and Care Coalition of Utah County and she must do so within 60 days of the entry of an order in this matter. If the Food and Care Coalition is unable to use her community service on the schedule set forth, she must perform community service under the direction of the United Way of Utah County.

### **Analysis and Ruling**

#### **I. Asset Valuation and Distribution.**

##### *a. Date for Valuation.*

The first issue which the parties raise is the date that the court should use for valuing the marital assets. In this case the parties were divorced by a default decree entered in September 2003. Immediately after the divorce Buck married. Then Cindy asked the court to set aside the default decree. In response, the court set aside all of the provisions of that default decree except the actual divorce. Thus, as of September the parties were divorced, though they had many unresolved issues between them.

The case law is replete that assets generally should be valued as of the date of the divorce decree. In this case the decree was entered in September 2003. The claim now is made that the decree was obtained through fraud or misrepresentation on Buck's part and as a result, the court should value assets as of the time of trial, not as of September 2003.

I do not fully know the reality of Cindy's claim that Buck induced her not to answer the petition. Nor does the file adequately reflect the reason for the decision of Judge Davis to set aside all of the terms of that decree except the actual divorce. Nonetheless, from September 2003 on the parties have known they were divorced and in many ways have moved on with their

lives. For example, Buck remarried and Cindy engaged in a long relationship with another man. Because each moved forward in significant ways, clearly acting as if their marriage was over, and given the general rule that assets should be valued as of the date of the decree, I decline to follow Cindy's request and fix this trial date as the date for asset valuation. I thus will fix the asset valuation and distribution based on the assets existing and their values as of September 5, 2003.

b. *Valuation of Business Assets.*

The largest issue in this case is what value should be attached to the parties' interests in two businesses: KBR Systems, Inc., a corporation as to which Buck is a 50% stockholder, though his stock is a marital asset; and BASCO, LLC, a land holding company as to which Buck owns a 50% interest, though that interest also is a marital asset. Buck asserts that I should not simply use book value for these assets, but rather, I should apply a discount from that book value. Cindy disagrees.

KBR is a small, though profitable and apparently well-run, construction company. In fixing a value for KBR, Brad Townsend, the business evaluator, concluded that the appropriate way to value this business was to take its book value and then apply discounts from that book value. He recommended a discount because of its lack of marketability. This lack of marketability arises for at least four reasons: KBR lacks diversification and is heavily dependent on the economic outlook in the construction industry; it relies heavily on its key managers so the loss of either Mr. Cardin or Buck could significantly impact its ability to generate cash flow and income as it has in the past; the company operates primarily in Utah and Nevada, and thus, its business is dependent upon the continued strength of the construction market in those two states; and, finally, given its size, the company cannot expect to obtain financing without the personal

guarantees of Buck and Mr. Cardin. Each of these factors has a direct and significant impact on the true value of the business.

Second, Mr. Townsend applied a discount because any purchaser of Buck's interest in the business would not have effective control of the company. Because Buck and Mr. Cardin are 50-50 partners, neither has control of the business, but they must fully cooperate together. Thus, in a forced sale of Buck's interest, which is one reasonable method to value the business, any purchaser would not gain control of the ongoing business.

For each of these two reasons, in fixing a value for KBR Mr. Townsend applied a numerical percentage discount. The aggregate of these two discounts results in a net discount of 27%. In arriving at this net discount, Mr. Townsend admitted that he arrived at the percentage amount of the discounts himself, that there is no set formula for arriving at these amounts, but that using his best, professional judgment, the aggregate discount of 27% is appropriate. When pressed, it was clear that Mr. Townsend selected the amounts of these two discounts based on his professional judgment, but without resort to any objective criteria. Rather he seemingly pulled these numbers out of the air.

It is clear that some level of discount is appropriate in this matter as both the lack of marketability and lack of control significantly impact what a buyer would pay for Buck's interest in KBR. And, after all, the best indicator of value is what a willing buyer would pay in an arm's length transaction.

Because Mr. Townsend was unable to provide a rationale for his choice of the amounts of the two discounts which he applied in this case, I am not willing to accept his decisions of the discount amounts whole cloth. On the other hand, Buck previously agreed with his partner that

in the event of an involuntary dissolution book value would control. It can be argued with fair persuasion that to give to his partner a greater potential recovery than his ex-spouse is patently unfair. In my view the discounted value proposed by Mr. Townsend represents the lowest possible figure that the court can use in fixing the value of this marital asset while book value represents the highest possible figure that the court can use. If there is to be error in this matter, that error should be in Cindy's favor, as, by the award of the stock in KBR to Buck, she is being divested of any claim to one of the two largest income generating assets of the marriage. She should only be divested of her interest in exchange for a fair value. It is not appropriate simply to split the difference between book value and Mr. Townsend's discounted value. Rather, I am convinced that a fair valuation would be two-thirds of the way between Mr. Townsend's discounted value and book value. True, this is arriving at a number in the same way that Mr. Townsend did, by simply choosing a number. The difference, however, is that Mr. Townsend provided no rationale for his decision while the court has viewed his decision, viewed the book value, which is a number that Buck previously agreed with his partner would be used to value the business in the event of an involuntary distribution. This is valuation is akin to such an involuntary distribution. I thus pick a point between the two values and conclude that the appropriate value to be assigned Buck's interest in KBR is \$586,648.

Buck should be awarded KBR free of any claims of Cindy at a value of \$586,648.

Mr. Townsend also arrived at a value for BASCO. Again he found book value and then applied a discount. I do not accept his discounts, but simply fix the value of BASCO at book value.

BASCO is largely a passive business. It owns two properties, one of which is the



property which KBR rents from BASCO as a location from which to operate its business. This property is encumbered by certain mortgage debts. Essentially all that BASCO is obligated to do with respect to this property, and as a result of its lease to KBR, is to collect the rents and pay the mortgage debts and real property taxes. BASCO also owns a second property which also requires only the same level of involvement in its maintenance.

Because BASCO's business does not require any significant management or oversight from either Buck or Mr. Cardin, the discounts from value that Mr. Townsend applied in determining a recommended value to the court for purposes of this marital dissolution are not proper. True, under the decision here made, Mr. Cardin now will have Cindy as his partner in BASCO rather than Buck, but the effort necessary to continue the operation of the business with Cindy as a partner rather than Buck will not be any different than now existing, two partners will have to cooperate together in the minimal, ministerial tasks of receiving payments, paying mortgage and other payments, and distributing funds to each other.

I am certain that Mr. Cardin may not wish to have Cindy as a partner. Yet, the surest way to disentangle Cindy and Buck is to award each assets of substantially equal value so that neither is obligated to make long term payments to the other. Awarding Cindy BASCO will accomplish this goal. If either Mr. Cardin or Buck wish a different result, they will have to find a mechanism to buy out Cindy's interest in BASCO awarded here.

The value of Buck's one-half interest in BASCO, as of September 5, 2003, is fixed at \$257,875. This asset should be awarded to Cindy.

c. *Assignment of other marital assets.*

The marital home is valued at \$550,000. It should be awarded to Cindy, including any

appreciation since the September 2003 divorce. The home equity loan debt on the home existing on April 1, 2003, in the sum of \$319,445 should be assigned to Cindy. This results in Cindy having an equity in the marital home of \$230,555. Cindy must refinance or sell this home within one year so that she and Buck no longer are financially entangled together. As well, Buck has incurred additional charges against the home equity loan after April 1, 2003. He must be responsible for these and he must fully cooperate with Cindy in the sale or refinance of the home, including making arrangements for his refinance of his portion of the home equity line.

The bank account which Buck had at the time of the parties' separation is awarded to him in the amount of \$25,985.

The travel trailer which the parties owned has been sold by Buck and he kept the proceeds. He is charged for this asset \$18,000.

Cindy has cashed in her 401(k) account, which was a marital asset. She is charged for this asset \$2,561.

Buck has a 401(k) account in the sum of \$95,929. This account should be divided by a qualified domestic relations order.

The parties have divided personal property. I confirm that division but I value the property differently than Cindy did. As a result, Buck should be charged with the receipt of \$19,935 in personal property while Cindy is charged with the receipt of \$23,520 in personal property.

After the divorce Buck purchased a vehicle for Cindy. This asset constitutes a marital asset and is charged to Cindy in the sum of \$8,484.

Cindy forged a check payable to Buck to reimburse his payment for the repair of the

vehicle given to Cherice. She should be charged with this item in the sum of \$1,044.

During the time after the divorce Buck received BASCO distributions in the sum of \$35,000. These are charged to Buck in the financial settlement.

A worksheet which details the assignment of assets as set forth herein is attached as an exhibit.

## **II. Assignment of Debts and Other Payments.**

At the time of the divorce Buck was indebted to KBR in the sum of \$87,325. This was a marital obligation. Buck has repaid a significant portion of this debt and is obligated to repay it in full, with interest. The fact that Buck and Mr. Cardin have accrued interest on their borrowings from KBR and have made repayments with interest demonstrate that these are in fact arms-length, bona fide debts. Buck is assigned the obligation to repay this debt and is credited with it.

At the time of their separation the parties owed \$319,445 on a home equity line. As noted above, because she is awarded the home Cindy is assigned this obligation. Post-separation Buck has obtained other advances on this line. He is responsible for all sums advanced over and above \$319,445. Until this loan is refinanced or the home sold, the parties will be obligated for interest payments on the home equity line based upon their separate shares of the total home equity line debt as set forth here. Because the parties need to be financially disentangled, this debt must be refinanced within one year or the home must be sold. Each party must cooperate in good faith with the other to obtain the refinance of this loan.

Before their separation Cindy had incurred credit card debt of \$22,552. Post-separation she has continued to charge against her credit cards. She must be fully responsible for all of the

payments on these cards, both pre- and post-separation. She is charged for the amount of the pre-separation credit card debt.

The parties incurred bills to Dr. Featherstone, Mr. Townsend, Denbow Appraising and Jerry Webber for services necessary for the preparation for and presentation of this case. These are in the amounts of \$3,000, \$17,366, \$400, and \$5,000 respectively. Buck has paid each of these and should be credited with these payments in the financial reconciliation.

The amounts of these charges and credits are set forth on the attached worksheet.

As set forth in the worksheet, the value of the assets awarded to Buck, less the credits for debts and payments which he made or is responsible for, is \$566,977. The value of the assets awarded to Cindy, less the credits for debts and payments which she made or is responsible for, is \$501,487. This results in a difference of \$65,490 in Buck's favor. To equalize the assignment of assets, Buck must pay to Cindy the sum of \$32,745. In this matter it is clear from all of the evidence which the court heard that Buck has considerable access to funds from his business or from loans. In order for the parties to be disentangled, Buck must pay this sum to Cindy within six months.

### **III. Alimony**

Cindy makes three requests with respect to alimony: that she be awarded alimony for the period from the parties' separation to the time of the hearing on temporary orders in February 2004; that alimony be recalculated for the period after the temporary order hearing and before this trial; and that she be awarded permanent alimony. I deny the first two of these requests.

The record is clear that during the period from separation until the February 2004 hearing on temporary orders, Buck paid essentially all of Cindy's living expenses except for food and

clothing and he gave her \$1,200 per month to meet these needs. Cindy's extravagant credit card purchases during this period demonstrates that she was not left without financial recourse. Buck provided for her in a satisfactory way. I decline to revisit the issue, as it appears Judge Davis also did at the time of the hearing on temporary orders.

Second, Cindy wants alimony recalculated for the period after the temporary order hearing and before trial. She is not entitled to this recalculation. Once alimony support payments become due, indeed in this case, once they have actually been paid, they no longer can be modified. Parties are entitled to some predictability and finality. I will not reach back in this case as Cindy asks.

Finally, Cindy asks for an award of permanent alimony. The parties have been married for over 28 years. Cindy is entitled to an award of permanent alimony for a period of 28 years, or until the earlier happening of any of the following events: she remarries, cohabits, dies, or Buck becomes permanently disabled. As well, to protect this claim, Cindy is entitled to an undivided beneficial interest in Buck's \$2 million life insurance policy in the sum of \$750,000 for any period as to which she is entitled to an alimony.

The amount of permanent alimony is a difficult issue. Buck is able to control considerable sums of money in his business and through various loans, including loans from KBR and his home equity line. Yet, loan capacity does not evidence financial strength from which alimony can be paid as loans must be repaid. Thus, the most accurate gauge of Buck's ability to pay alimony is his earning capacity at KBR. For the three years 2002-2004, Buck had average annual income from KBR of \$136,700. Then, in 2005 he had income from KBR of \$310,410. Thus, for the four year period of 2002-2005 he had aggregate income of \$720,510, or

an annual average of \$180,127. As well, Buck made representations to lenders concerning his income. In August 2003 he applied for a loan and reported income of \$170,000 per year and in July 2004 he applied for a loan and reported income of \$18,500 per month or \$222,000 per year.

The bottom line question is, given these facts, what level of income the court should use in fixing Buck's alimony obligation to Cindy. I conclude that Buck has the capacity to earn not less than \$150,000 per year and that alimony should be fixed based on that amount. For three of the four years during these parties's separation Buck had income from KBR of just under \$137,000. That should provide the baseline for his income. On the other hand, during 2005 he had double the income that he ever had previously. That income level is unusual and there is no evidence that it likely will be repeated. As well, a significant part of that income was planned as a vehicle for Buck and Mr. Cardin each to retire large portions of their debt to KBR. Thus, much of this income does not represent actual cash into Buck's pocket. Because he never has earned anywhere that level of income before and there is no evidence that he will do so hereafter, I do not give the unusual income in 2005 much weight in fixing Buck's income for alimony purposes.

A second major factor to be considered in determining the amount of alimony to award to Cindy is the amount that Buck has paid to her or on her behalf on a temporary basis. Information as to Buck's actual capacity, as demonstrated by over two years of payments, provides helpful evidence on the amount of alimony that Buck can afford to pay.

During the period covered by the temporary order Buck paid Cindy \$3,250 per month in alimony, he paid approximately \$1,800 per month in interest on the home equity line, he paid \$300 per month for her health insurance premium and he paid property taxes and home owners insurance in the approximate sum of \$320. Thus, on a monthly basis he paid \$5,670 per month

to Cindy or for her benefit. It therefore could be argued that this demonstrates that Buck has the capacity to pay at least \$5,600 in alimony each month. In fact, however, Buck would disagree. He claims he only was able to make these payments to Cindy by borrowing from KBR and from the home equity line during this time. It is accurate that he borrowed to increase the amount of these two debts by over \$140,000, not including additional borrowing for the down payment on his new home. However, during that same time Buck paid attorney's fees of \$170,000, which includes \$20,000 in fees that he paid for Cindy. Thus, most or all of this additional debt was used to cover the tremendous attorney's fees in this case. Had he not incurred these fees he would not have needed to borrow, thus demonstrating that in fact he had the capacity to pay the alimony and payments in the form of alimony.

A further issue that must be considered in any alimony analysis is the standard of living which the parties enjoyed during the marriage. In short, it was exceptional. Because of Buck's financial management they were able to live in a beautiful home and enjoy many, many of the luxuries of life, including trailers, four-wheelers and other toys. Because of his income Buck will be able to continue to live in this style. Without alimony Cindy will not. In order for each party to continue with the standard of living which they enjoyed during the marriage, Cindy must be awarded alimony.

In this case Buck has an ongoing earning capacity of \$12,500 per month and he has capacity from that income to pay alimony to Cindy. Cindy has a need for alimony. She has no significant employment skills and she has the duty to satisfy over \$319,000 in debt. The only way she can do this is through receipt of alimony. In this case a fair and equitable alimony award for Cindy is \$4,000. That is more than double the interest expense on the home, it will leave her

with funds to pay her credit card debt, it will cover her other living expenses, and it will allow her sufficient funds for a continued comfortable lifestyle, such as actually existed during the marriage of the parties. At the same time, this level of alimony will leave Buck with gross income of \$8,500 per month to cover his financial obligations, including the significant debt which he has incurred, and payment for his new home. This is a fair and appropriate level of alimony.

Finally, the issue of alimony is separate from the issue of the distribution of property. Each party must receive a fair and equitable distribution of property from the marriage, which is what has occurred. Yet, on top of that, Cindy will need ongoing alimony in order to maintain her lifestyle. The only asset which generates cash to her is the award of BASCO, which only has generated \$35,000 over three years, or an average of approximately \$12,000 per year. That will result in a monthly supplement of \$1,000 to her lifestyle, and will allow her to retire her attorney's fees and other obligations. I am persuaded that a \$4,000 alimony will provide Cindy with a reasonable continuation of the lifestyle which she enjoyed before the break up of this marriage.

#### **IV. Other Miscellaneous Issues.**

##### *a. Attorney's fees.*

The attorney's fees in this case have been staggering. Yet, neither party has significant ability to pay the attorney's fees of the other. As well, each party prevailed on some of the issues which they raised. Buck prevailed on custody while Cindy prevailed on at the trial on termination of alimony. Each party has prevailed on some of the issues raised in this trial. Because each has prevailed on some issues, assignment of attorney's fees on the basis of who is



the prevailing party is inappropriate. I deny either party an award of their attorney's fees.

*b. Tax dependency exemptions.*

Buck is providing the lion's share of support for the children and he is providing essentially all of Cindy's support. It is appropriate the he be awarded the tax dependency exemptions for the children.

*c. Life Insurance.*

Because Buck has an ongoing alimony obligation for Cindy, it is appropriate that Cindy be named as beneficiary for an undivided \$750,000 of his coverage until such time as he no longer has an alimony obligation to her.

*d. Nelda Robinson's Pleasant Grove Property.*

Cindy claims that Buck has a right to acquire certain property from Nelda Robinson and that this is a marital asset as to which she is entitled to a fair share. She is wrong. Neither party has any present, legally enforceable claim against this property. It is not considered in the distribution of the marital assets of the parties.

*e. Child Support.*

The parties agree that, given the schedules, Cindy should pay child support to Buck for the two children in the amount of \$148 per month. Additionally, the parties should be required to follow the provisions of title 78-45-1, *et seq.* with respect to medical and other expenses for the children.

**V. Contempt.**

Cindy was ordered on two different occasions by the court to turn over to Buck, as custodial parent, the clothes and essentially all of the toys of the children. She claimed to have

done so. Her claim is untrue.

Cindy had the capacity to obey these order but chose not to do so. She cannot claim not to have understood what was required of her. The orders of the court were clear.

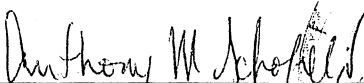
Cindy is in contempt of the court. For that contempt she must be required, within 60 days, to perform 80 hours of community service at the Food and Care Coalition of Utah County. If that agency cannot use her service, she must arrange community service through the United Way of Utah County.


I decline to make a finding of contempt as against either party for any other alleged malfeasance.

Pursuant to Rule 7(f)(2), Utah Rules of Civil Procedure, Buck's counsel is directed to prepare findings of fact, conclusions of law and an amendment to the decree of divorce which are consistent with this ruling.

Dated this 16 day of June, 2006.

BY THE COURT:

  
\_\_\_\_\_  
ANTHONY W. SCHOFIELD, JUDGE



### MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing was mailed to the following, postage prepaid, this 19 day of June, 2006:

Douglas B. Thayer  
3319 North University Avenue, Suite 200  
Provo, Utah 84604

Steven C. Tycksen  
5300 South 360 West, Suite 360  
Murray, Utah 84123

LORI WOFFINDEN  
CLERK OF THE COURT

By J Christensen  
Deputy Clerk

<b>Assets</b>	<i>Asset Value</i>	<i>Awarded to Buck</i>	<i>Awarded to Cindy</i>
KBR Systems Inc.	586,648	586,648	
BASCO, LLC	257,875		257,875
Marital home	550,000		550,000
Bank account	25,985	25,985	
Travel trailer	18,000	18,000	
Cindy's 401(k)	2,561		2,561
Buck's (401)k	95,929	divided by QDRO	
Personal property	43,455	19,935	23,520
Ford vehicle	8,484		8,484
Forged Check	1,044		1,044
BASCO distributions	35,000	<u>35,000</u>	<u>          </u>
<b>Total Assets</b>		685,568	843,484

Assets minus debts and payments	566,977	501,487
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$$\$566,977 - \$501,487 = \$65,490 / 2 = \$32,745$$

# **EXHIBIT D**



Code: \_\_\_\_\_ / Family Rep: Yes No  
Teacher: Clements / Student #: 997490  
P.M.

## Freedom Elementary School New Student Registration

Student Name: Bradbury Carley Rae  
Last First Middle

Age: 1 Social Security #: \_\_\_\_\_ Sex: ☐ Male ☒ Female  
Optional

Date of Birth: 1 / 3 / 98 Place of Birth: West Jordan, UT  
Month Day Year City State

Has your child ever attended school in Alpine School District? ☐ Yes ☒ No

Transferred from: ☐ Within the district ☐ Out of district ☐ Out of State  
☐ Out of Country - What Country? \_\_\_\_\_ Entry Date: \_\_\_\_\_

School Last Attended: West Jordan Elem. Address West Jordan UT 84084  
Street City State Zip

Ethnic Origin (optional): ☐ Asian ☐ American Indian ☐ Hispanic ☐ Black ☐ Pacific Islander ☒ Caucasian (white)

Home Phone: (801) 7683846 (801) 2325158 m)

Home Address: 578 E 1500 North  
ehi UT 84043  
Zip Code

Mailing Address (if different): P.O. Box 1383  
West Jordan UT 84084  
Street City Zip Code

Student Lives With	Foster	Step	Cell Phone #	Work Phone #
Teacher				
Teacher				
Guardian				
Parent			<u>801 390 2274</u>	<u>801 768 3846</u>

Has your child been living in the US for the last 3 years? ☒ YES ☐ NO

Has your child been attending school in the US for the last 3 years? ☒ YES ☐ NO

Do you have legal custody of the child you are registering? ☒ YES ☐ NO

Is the primary language spoken in the home English? ☒ YES ☐ NO

If no, what language is spoken? \_\_\_\_\_

Who speaks the non-English language? \_\_\_\_\_

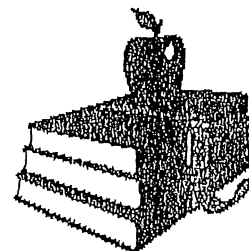
Are you living with friends or relatives? ☒ YES ☐ NO

Does this student have an Individualized Education Plan (IEP) or is he/she

currently receiving Special Education services? ☐ YES ☒ NO

Is the child you are registering a foster child or ward of the court? ☐ YES ☒ NO

Has your child ever been suspended/expelled from school? ☐ YES ☒ NO



I hereby certify that the information is true and correct to the best of my knowledge. Any falsification of the information  
may result in the cancellation of the transfer or opportunity to attend school in the Alpine School district.

Signature of Parent or Legal Guardian: Harley Bradbury Date: 11/2/04

Bradbury, Carley

Last Name		Middle	First
Address		6671 S. 2700 W.	Telephone 569
Social Security Number		Student Number 8218929	
Date of Birth 1/3/98		Place of Birth	
FATHER		Harley	
MOTHER		Starla	
LEGAL GUARDIAN			
Pupil Lives With		Language(s) Home	

### ELEMENTARY SCHOOL RECORD

[illegible]

Excellent .....	80-89% = G
Good .....	65-79% = S
Satisfactory .....	Below 65% = NI
Needs Improvement .....	P
Participates .....	N/A
Not Applicable .....	
Grade Level of Instructional Materials .....	

# REPORTING PERIOD

## READING — Edelson

	First	Second	Third
Phonics and Word Attack Skills	NI		
Vocabulary Development	NI		
Oral Fluency and Expression (reading aloud)	NI		
Comprehension	NI		
Independent Reading	NI		

## LANGUAGE — Edelson

	First	Second	Third
Written Expression of Ideas	S		
Grammar	S		
Verbal Expression of Ideas (Reports, Sharing, etc.)	S		

## SPELLING —

	First	Second	Third
Spells Assigned Words Correctly	NA		
Applies Spelling Skills in Written Work	NA		

## MATHEMATICS — Edelson

	First	Second	Third
Basic Math Facts (+) (-) (x) (-)	S		
Computation/Accuracy	S		
Problem Solving			

## HANDWRITING — LL

	First	Second	Third
Forms Letters and Words Correctly	G		
Written Work is Neat and Legible	G		

## SOCIAL SCIENCES — LL

	First	Second	Third
Science/Health	P		
Social Studies	P		

## ARTS & TECHNOLOGY — LL

	First	Second	Third
Art	P		
Computer Skills	P		
Music	P		
Physical Education	P		

## WORK SKILLS —

	Needs Impr.	Satisfactory	Honors	Needs Impr.	Satisfactory	Honors	Needs Impr.	Satisfactory	Honors
Completes Assignments as Expected	✓			✓			✓		
Listens and Follows Directions	✓			✓			✓		
Works Independently	✓			✓			✓		
Shows Initiative	✓			✓			✓		
Takes Pride in Work	✓			✓			✓		

## SOCIAL SKILLS —

	Needs Impr.	Satisfactory	Honors	Needs Impr.	Satisfactory	Honors	Needs Impr.	Satisfactory	Honors
Cooperative in Classroom	✓			✓			✓		
Cooperative out of Classroom	✓			✓			✓		
Exhibits Age Appropriate Behavior	✓			✓			✓		
Gets along with Peers	✓			✓			✓		

# Elementary Student Progress Report

Jordan School District

Student Carly Bradbury Grade 1

School West Jordan Elementary

Teacher Mrs. Edelson Year 04/05

Other Teachers \_\_\_\_\_

## Celebrate Each Child

Our concern is the individual growth of each child rather than a comparison with the achievement of other members of the class.

Year's Record of Attendance	Total
Days of Attendance	
Days Absent	
Days Tardy	

## Student Education Plan (SEP)

1st SEP Date \_\_\_\_\_ Student \_\_\_\_\_ Parent \_\_\_\_\_ Teacher \_\_\_\_\_  
Initial Initial Initial Initial

Accomplishments/Strengths:

Goals:

Areas for Improvement:

2nd SEP Date \_\_\_\_\_ Student \_\_\_\_\_ Parent \_\_\_\_\_ Teacher \_\_\_\_\_  
Initial Initial Initial Initial

Accomplishments/Strengths:

Goals:

Areas for Improvement:

Your child is recommended for placement in the \_\_\_\_\_ grade for the \_\_\_\_\_ school year.