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# Lessons from the \$1B divorce case: How to split business assets

What do a spouse's efforts mean for the valuation of a business and its division in two?

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By **Darla Mercado**

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Harold Hamm (*Bloomberg News*)

Harold Hamm's divorce case is grabbing advisers' attention for a reason other than

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the billions at stake: the dilemma how to split assets tied to a business.

Did Mr. Hamm's business rise in value due to normal market forces over the course of the marriage, or was it due to his own efforts?

By now, you're familiar with the famed \$975 million check that Mr. Hamm, CEO of Continental Resources, **wrote to his ex-wife Sue Ann Arnall**. An Oklahoma state court had ordered Mr. Hamm to pay that money to Ms. Arnall, as an amount in property division alimony and interest. The order also dissolved their 26-year marriage.

Initially, Ms. Arnall refused the check, but later cashed it and said she would press on with an appeal against the earlier decision.

"I will not dismiss my appeal and do not feel that my right to appeal should be denied because I have accepted, in the interim, a small portion of the estate that we built over more than two decades," Ms. Arnall told **Reuters** in a Jan. 12 statement through her lawyers. That marital estate is reportedly worth more than \$18 billion.

Though it's safe to say Ms. Arnall and Mr. Hamm will again have their high-stakes day in court, advisers specializing in divorce say they've confronted similar issues among clients when determining how to split assets



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between spouses when a business is involved.



“The big issue in their case, and in many others, is to what extent did the increase in the value of the business relate to normal market forces versus the husband's effort from working in the business,” said Justin Reckers, managing director of Pacific Divorce Management and director of financial planning at Pacific Wealth Management.

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## DIVISION OF PROPERTY

According to the **November ruling**, the Oklahoma state court discussed the issue of separate versus marital property in the context of a division between parties.

Property acquired during marriage is joint in nature. Meanwhile, when it's contended that the property was acquired as the separate property of one spouse, it depends on the source of that property, as well as the intent and purpose behind it, according to Judge Howard Haralson, who ruled on the case.

When separate property becomes jointly owned, it's considered a gift to the marital estate. Further, separate property can change after it's been acquired, and become marital property if it's commingled with other marital properties, according to Mr. Haralson.

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Finally, and most importantly: When separate property is brought to the marriage and rises in value during the marriage, that increase in value is considered wholly or partly marital in nature, depending on the cause. In his ruling, Mr. Haralson cites a past case in which the Oklahoma Supreme Court held that if a spouse brings separate property to the marriage and its value rises from circumstances beyond the parties' control — market appreciation, for instance — the increase can't be treated as a divisible marital asset. There must be proof that the rise in value stemmed from the efforts of a spouse.

“The labor and efforts of both spouses belong to the marital partnership [...] and the income earned by a spouse during coverture is generally marital in nature,” the judge observed in his November ruling.

That brings us back to whether the rise in the business's value stemmed mostly from normal market forces, or did it track back to Mr. Hamm's management?

## EVERY EFFORT COUNTS

Divorce experts noted that it can be fairly difficult to split up a business asset between spouses. For instance, in the Hamm case, though the oil magnate founded the company long before marrying Ms. Arnall,

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she did work for the company at times in crude oil marketing and sales.

In divorce, how assets are divided turns on state law: Under a community property regime, joint assets are generally divided 50/50. Equitable distribution regimes allow the court to split a property based on what's equitable to both spouses – which may not necessarily be 50/50.

Valuing exactly what both spouses contribute to a business isn't always cut and dried, either.

“In one situation, you can have both parties running the business,” said Avani Ramnani, director of financial planning and investment management at **Francis Financial**. “The wife might be more on the administrative side and the husband on the functional side. His argument might be that if he's not there, there's no business. But her argument is that she helped create it and owns part of it.”

Matrimonial attorney Randi L. Karmel noted that contributions can be direct, as in Ms. Ramnani's example, or indirect.

“Sometimes the spouse is a bookkeeper, sometimes they pitch clients or they loan money – these are fairly direct,” she said. “In other situations, the [business-owning spouse] wouldn't have the business and the family. He or she travels for business and



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obtained international clients while the spouse stayed home and cared for the kids.”

Courts can be very discretionary when determining the value of those spousal efforts in a business, Ms. Karmel noted.

At times, divorcees will try to claim that a non-working spouse did nothing to increase the value of the business. Mr. Reckers encountered such a situation in one divorce case.

“He claims that [she] helped care for the kids, but never came to social functions when he prospected for clients and didn't make it known to the world that she was in the business,” Mr. Reckers said.

“Unfortunately for him, he's wrong,” he added. “She doesn't have to work in the company. She just has to be married to him while he's working in the business.”

## **STAYING OUT OF COURT**

Ultimately, prevention is the best way to avoid a scenario wherein spouses will debate settlements and the value that they brought to the business. That's best handled in a **pre-nuptial agreement that's drafted early on and revisited periodically**.

These agreements can override state laws that would deem how property is to be divided, said Ms. Karmel.

Business owners can also exclude their separate property from community property assets in a prenup, which is especially valuable if the business is expected to rise in value, noted Mr. Reckers.

Just as important, clients ought to try staying out of court.

“Push as hard as you can to get the client to stay out of the court system,” Mr. Reckers added, noting that since the Hamm case is public, personal details on the couple's holdings have been out in the open since the November ruling. “This is private information, and if this were done outside of the court, it would stay private.”

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