NANCY G. SLUTSKY,	:	**SUPERIOR COURT OF NEW JERSEY**
	:	**APPELLATE DIVISION**
Plaintiff/Respondent,	:	
	:	**DOCKET NO. A-000922-24T4**
	:	
v.	:	**Civil Action**
	:	
KENNETH J. SLUTSKY,	:	**On Appeal From:**
	:	
Defendant/Appellant.	:	**SUPERIOR COURT OF NEW JERSEY**
	:	**CHANCERY DIVISION, FAMILY PART**
	:	**MORRIS COUNTY**
	:	**FM-14-1535-08**
		Sat Below:
		HON. JAMES M. DEMARZO, P.J.F.P.

BRIEF OF DEFENDANT/APPELLANT IN SUPPORT OF APPEAL

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PRELIMINARY STATEMENT

Following a remand by this Court to a new judge ("remand judge") to address four specific and limited issues related to this divorce matter, defendant appeals from parts of the remand decision entered on May 31, 2024 ("Remand Decision"), and amended order entered on November 18, 2024 ("Amended Order"), addressing three of those issues: (i) valuing his interest in Lowenstein Sandler ("Lowenstein") at $790,501.20; (ii) awarding plaintiff 50% of the value of his interest in Lowenstein; and (iii) awarding plaintiff $487,041.15 in counsel fees for all of her attorneys. In reaching these conclusions, the remand judge, similar to the initial trial judge ("trial judge") and contrary to this Court's published opinion, made repeated errors of law, abused his discretion, and ignored or misconstrued the credible evidence. These conclusions, individually and collectively, are ripe for reversal once again.

The history of this divorce matter has been tortuous, with the complaint having been filed approximately 17 years ago on May 20, 2008. Defendant simply seeks to have this matter concluded, once and for all, in a manner that is consistent with applicable precedent and fundamental fairness.

The remand judge ordered defendant, an equity partner at Lowenstein, to pay $395,250.60 to plaintiff, representing 50% of what he found to be defendant's interest in Lowenstein. This value

consisted of two components, the value of defendant's termination credit account ("TCA"), and the value of defendant's goodwill.

As to the former, the remand judge erred by simply averaging the values of plaintiff's and defendant's respective experts, by failing to meticulously analyze the experts' values, and by failing to adjust plaintiff's expert's value after identifying an error with respect to the expert's methodology.

As to the latter, the remand judge erred by disregarding established precedent and the specific terms of Lowenstein's shareholders agreement, finding goodwill in the absence of evidence, and valuing the goodwill. As a matter of both law and fact, defendant has no goodwill interest in Lowenstein that could, or should, be the subject of equitable distribution that is not subsumed into the value of his TCA.

Further, the remand judge ordered defendant to pay $487,041.15 in counsel fees on plaintiff's behalf, representing 35% of the total counsel fees she incurred, while the remand only pertained to the counsel fees she incurred with one of her prior attorneys, Donahue, Hagan, Klein & Weisberg, LLC ("Donahue Hagan"). In fact, the trial judge specifically denied plaintiff's request for defendant to contribute toward the counsel fees for any of her other attorneys. Plaintiff had not appealed the denial of counsel fees for her other attorneys, leaving defendant's appeal of the

award of counsel fees for Donahue Hagan as the sole issue remanded relating to plaintiff's counsel fees.

Moreover, in awarding plaintiff 35% of the total counsel fees that she incurred, the remand judge failed to appropriately analyze, and in some respects misapplied, the relevant factors, including, among others, the reasonableness of the fees, and plaintiff's bad faith and responsibility for creating the fees.

STATEMENT OF RELEVANT PROCEDURAL HISTORY[1]

Plaintiff filed for divorce on May 20, 2008. (CDa3)[2]. Trial commenced more than 5 years later on January 6, 2014, continued for a total of 19 days, and concluded on March 11, 2014. (CDa76). After submission of proposed findings of facts and conclusions of law, and certifications of services, on May 30, 2014, the trial judge issued a final judgment of divorce ("FJOD") and a written opinion after trial ("opinion"). (CDa63-118).

Thereafter, defendant moved to correct various clerical errors in the FJOD and to establish a payment schedule for his financial obligations set forth in paragraphs 1, 2 and 24 of the FJOD. (CDa119-135). Plaintiff cross-moved to reconsider paragraph 7 of the FJOD and to include defendant's two pre-marital IRAs in equitable distribution, and to establish a different payment

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1 1T is the transcript from August 6, 2019.
2T is the transcript from May 4, 2023.
3T is the transcript from September 6, 2024.

2 All references to "Da" are for defendant's appendix, and all references to "CDa" are for defendant's confidential appendix.

schedule for defendant's financial obligations in the FJOD. (CDa119-35).

On July 28, 2014, the trial judge entered an amended final judgment of divorce ("Amended FJOD"), which granted defendant's request to correct the various clerical errors in the FJOD. (CDa119-21). On that same date, the trial judge entered order #2 of 3, which granted plaintiff's request to reconsider paragraph 7 of the FJOD and included defendant's two pre-marital IRAs in equitable distribution. (CDa122-24). Also on that same date, the trial judge entered order #3 of 3 which, in paragraph 2, established a payment schedule for defendant's financial obligations. (CDa125).

Defendant appealed from parts of the FJOD, including: (i) valuing his interest in Lowenstein at $1,247,830, and awarding plaintiff 50% of the value; (ii) awarding plaintiff $467,793.38 in counsel fees for Donahue Hagan; and (iii) including his two pre-marital IRAs in equitable distribution. Slutsky v. Slutsky, 451 N.J. Super. 332 (App. Div. 2017). Plaintiff cross-appealed from parts of the FJOD, but pointedly did not appeal the trial court's decision on counsel fees. Ibid.

On August 8, 2017, this Court issued a published opinion reversing the FJOD in part, and remanding three specific and limited issues to the remand judge for further consideration. Ibid. First, this Court vacated the value of defendant's interest in Lowenstein, and the award to plaintiff of 50% of the value of

defendant's interest in Lowenstein. Id. at 364. Second, this Court vacated the inclusion of defendant's two pre-marital IRAs in equitable distribution. Id. at 365. Third, this Court vacated the award of $467,793.38 in counsel fees for Donahue Hagan. Id. at 368.

After the submission of remand briefs and two testimonial hearings, one to determine the amount of Donahue Hagan's charging lien, and one to take limited testimony from defendant with respect to his two pre-marital IRAs, on May 31, 2024, the remand judge issued the Remand Decision. (CDa1-58).

Thereafter, defendant moved to reconsider his financial obligations in paragraphs 2, 3, and 4 of the Remand Decision, and plaintiff cross-moved to reconsider paragraph 1 of the Remand Decision. (CDa203-313; CDa314-331).

After hearing oral argument on September 6, 2024, on November 18, 2024, the remand judge entered the Amended Order denying defendant's requests to reconsider paragraphs 2, 3, and 4 of the Remand Decision, and denying plaintiff's request to reconsider paragraph 1 of the Remand Decision. (3T; CDa59-62).

Defendant filed a notice of appeal on December 2, 2024. (Da1-9).

STATEMENT OF FACTS[3]

Plaintiff and defendant were married on January 15, 1978. (CDa76). There were 3 children born during the marriage: Rachel, on January 28, 1982, Jason, on September 23, 1983, and Jenna, on August 11, 1987, all of whom are emancipated. (CDa76).

CREDIBILITY/CONDUCT OF THE PARTIES

Plaintiff has a bachelor's degree in accounting from The Wharton School of the University of Pennsylvania and a master's degree in finance from New York University Stern School of Business. (CDa78). She is a certified public accountant with special credentials as a personal financial specialist. (CDa78). Plaintiff also completed the course of study for, and passed a rigorous examination to qualify as, a certified financial planner. (CDa78).

Despite that she is a highly educated individual with a great deal of financial training, prior to and during the trial, plaintiff exhibited total disregard for the judicial system. (CDa85). The trial judge wrote:

> The court finds that the testimony of the Plaintiff was tenuous at best. She was angry, confrontational, non-responsive, erratic, evasive, and difficult. It was **"trying"** to listen to her when she was on the stand, as well as off the stand. She called out from counsel table and shouted out challenges to the witnesses. She made faces of disdain and projected negative body language

[3] This case does not lend itself to the type of factual narrative referenced by R. 2:6-2(a)(4). Rather, defendant discusses the facts in logical groupings relating to each of the issues addressed.

> throughout the trial. She was regularly admonished by the court. Despite her impressive academic credentials, she clearly was stressed beyond her limits and was very much an ineffective witness. She was unable to articulate any theory of need or support. She had a fixed agenda which included: leaving by noon of each day; getting an advanced degree; "getting back" at the Defendant; and on getting her medical expenses paid. She refused to answer questions on direct and cross or her answers were non-responsive. This had been her modus operandi from the inception of the case. She was removed from the courtroom at least once during the trial. She also left the courtroom in the middle of trial without excuse and chose not to participate in the trial that day. Plaintiff was belligerent. Plaintiff was fixated. She improperly had several people write letters to the court as to various issues she wanted addressed by the court, without the knowledge of her own attorney.

(Emphasis in original). (CDa85).

By way of contrast, concerning defendant's conduct during the trial, the trial judge wrote:

> Defendant was cooperative, respectful, forthcoming, and credible. Defendant maintained his composure, responded in a candid, straight-forward, direct, non-evasive manner to questions on direct and cross-examination, and to the Court's questions. Defendant maintained eye contact with the Court and the questioners, and in general gave the appearance of truthfulness.

(CDa85-86).

DEFENDANT'S EMPLOYMENT / INCOME

Defendant has been employed by Lowenstein since graduating from Harvard Law School in 1978. (CDa83). He is currently, and was at the time of trial, an equity partner specializing in complex tax and estate planning matters. (CDa83).

With respect to Lowenstein, the term "equity partner" means a partner whose compensation is determined through the firm's

allocation system, which is complex and is based upon various factors. (CDa18). In general, the compensation earned by any given partner for any given year is almost exclusively based on the partner's performance for that year, independent of previous years, with factors such as seniority and past performance having little or no relevance. (CDa83).

There is an important distinction between "allocations" and "distributions" under the Lowenstein system. (CDa83). At the end of each year, the firm's Allocation Committee (of which defendant has never been a member) evaluates the performance of each partner for that year in the context of the firm's overall performance for the year. (CDa83). The Committee then allocates the net firm profits for the year, determined on an accrual basis (as opposed to the cash basis used by the vast majority of law firms), among the equity partners, with each partner's share being allocated to his or her TCA. (CDa83). Only amounts that have been allocated to defendant's TCA can later be distributed to defendant or applied for his benefit. (CDa83). In discussing defendant's TCA, Judge Lihotz wrote:

> The CAO [Chief Administrative Officer] explained the firm's compensation system for equity partners, including the calculation of each partner's interest in the firm, known as the termination credit account (TCA). Throughout the year, partners received a draw and expenses and benefits, such as pension contributions, professional dues and associations, medical claims, as well as professional liability and life insurances. These payments reduced an individual's TCA. Then, at year-end, the firm's nine-member compensation committee computed

> the firm's excess income, which is allocated among the equity partners, based on a defined formula replenishing the TCA as of December 31. The allocation considered billable hours, "evaluated time," that is, collection of billings, and origination of new business. Seniority does not affect compensation, and past performance may be subjectively considered in a specific allocation. In essence, the TCA represents the equity partner's interest in the firm.
>
> Much of defendant's workload is originated by fellow partners. He was not a significant originator of new clients; rather, he worked many hours in his highly specialized practice area. Defendant received a gross bi-monthly draw, a quarterly distribution and a variable amount of excess distributions, based on his allocation of [the] firm's year-end net income, or profit. There also was an interest component attached to the TCA.
>
> Although the firm no longer imposes a mandatory retirement age, once an equity partner reached age sixty-five, the board of directors determines whether the individual could continue to participate in the allocation system or whether he or she moves to senior status, which is a salaried position. If a partner moved to senior status, the TCA account would not increase by future allocations, and charges against the account would cause it to decrease. The balance of the TCA would be paid out over four years, when an equity partner left the firm. Further, upon defendant's completion of thirty-years of partnership participation, he became eligible to receive a discretionary longevity bonus equal to twenty-five percent of the average salary earned during the five highest of his final ten years of service. In May 2008, defendant had not accrued the requisite vesting period; however, he achieved this milestone on December 31, 2013, prior to trial.

Slutsky, supra, 451 N.J. Super. at 351.

Not all of the amounts allocated to defendant's TCA are distributed directly to him. (CDa83). Instead, some allocations are used by the firm to pay for benefits such as: (i) contributions to defendant's qualified retirement accounts, (ii) annual premiums for

defendant's (and until the FJOD, plaintiff's) long-term care insurance and for insurance on defendant's life owned by a trust of which plaintiff is both the trustee and primary beneficiary, and (iii) claims under Lowenstein's executive medical plan. (CDa83).

While some of defendant's cash distributions were paid at regular intervals, the timing of the payment of the majority of these distributions varied significantly. (CDa83-84). At the time of trial, Defendant received a gross draw totaling $250,000 per year, payable semi-monthly at the rate of $10,416.67. (CDa83-84). Defendant also received gross distributions totaling $160,000 per year, payable at the rate of $40,000 per quarter. (CDa83-84). Thereafter, the firm paid excess distributions, which in some years totaled approximately $500,000. (CDa83-84). An excess distribution was only paid at such time as there was available cash taking into account the firm's business needs as determined by firm management. (CDa83).

Defendant's cash compensation varied from year to year. (CDa84). From 2007 through 2009, defendant's W-2 compensation, less the non-cash items included therein (as listed above), varied as follows: 2007 = $1,075,887, 2008 = $949,736, 2009 = $570,795. (CDa84).

As of January 1, 2013, Lowenstein's legal practice converted from a professional corporation to a limited liability partnership. (CDa79). At that time, defendant, like all other equity partners,

was required to make a capital contribution, which in defendant's case was $300,000. (CDa79).

DEFENDANT'S INTEREST IN LOWENSTEIN

Defendant's TCA was not a separate asset, and contained no actual funds. (CDa9-10). The TCA was a bookkeeping account only, which tracked over time the cumulative amount of compensation that had been allocated to defendant on an accrual basis but which had not yet been distributed to him in cash or applied for his benefit. (CDa9-10).

Defendant's TCA balance changed annually in specific relation to the net difference between the amount of the allocation added to his TCA and the amount of cash and noncash compensation distributed from his TCA. (CDa9-10). The year-end balances in defendant's TCA between 1999 and 2009 were as follows: 1999 = $792,425, 2000 = $901,899, 2001 = $1,085,472, 2002 = $942,172, 2003 = $865,774, 2004 = $937,745, 2005 = $985,697, 2006 = $816,283, 2007 = $741,023, 2008 = $424,837, 2009 = $603,728. (CDa147).

Once defendant is no longer a partner or employee of Lowenstein, his remaining TCA balance, with certain adjustments, will be paid to him (or his estate) over 4 years. (CDa146).

Plaintiff and defendant each produced expert witnesses to value defendant's interest in Lowenstein. (CDa136-80; CDa181-202). Defendant's expert was Mr. Hoberman. (CDa136-80). Mr. Hoberman opined that the value of defendant's interest was simply the

balance in his TCA as of the filing of the complaint, which was $523,000 pre-tax and $285,000 after-tax. (CDa163-64).

Mr. Hoberman opined that defendant did not have a goodwill interest separate from his TCA. (CDa163-64). He opined that even if an excess compensation analysis was applied, defendant's actual compensation was approximately the same as his reasonable compensation. (CDa152-64). In effect, Mr. Hoberman opined that defendant, with his educational background and extensive experience in a combination of legal areas (i.e., income tax planning, and estate, gift, and generation-skipping transfer tax planning), was nothing more than a hard-working and highly skilled working partner (i.e., "worker bee") who averaged 2,251.6 billable hours per year between 2003 and 2007, but did not originate his own clients. (CDa152-56).

Plaintiff's expert was Mr. Hirschfeld. (CDa181-94; CDa195-202). Rather than preparing a formal valuation of defendant's interest in Lowenstein, he submitted a "calculation of value" or "best judgment". (CDa181-94; CDa195-202). Mr. Hirschfeld's initial calculation was that the value of defendant's interest in Lowenstein was $1,540,000. (CDa189). However, after cross-examination, Mr. Hirschfeld revised his calculation such that the value of defendant's interest in Lowenstein was $1,478,206. (CDa195-202). His calculation included two components: (1) the present value of what he determined to be the terminal balance in

defendant's TCA at age 70 (i.e., not the present value of the balance in the TCA as of the filing of the complaint), and (2) the present value of what he determined to be defendant's goodwill interest. (CDa181-94; CDa195-202).

To calculate the present value of what he determined to be the "terminal balance" in defendant's TCA at age 70, Mr. Hirschfeld provided convoluted and confusing testimony that assumed that the year-end balance in defendant's TCA would grow by a flat 2% per year until defendant reached age 70, at which time the balance would be $1,025,743. (CDa181-94). To that amount, Mr. Hirschfeld added $323,836 as an add-on bonus that defendant might receive, which will ultimately be calculated based on the highest 5 years of defendant's income during his last 10 years, to arrive at a terminal balance of $1,349,579. (CDa181-94).

Since the terminal balance in defendant's TCA will be paid over four years, Mr. Hirschfeld then allocated the terminal balance over four years, added 6% interest, subtracted 30% in combined taxes, which he later (after cross-examination) increased to 35.5%, and utilized a 6% discount rate to arrive at an initial present value of $350,830, and a revised present value of $292,902 (CDa181-94; CDa195-202). Mr. Hoberman utilized a combined 40% percent tax rate, but did not use an interest rate or discount rate because he did not project defendant's TCA, as he used the balance as of the filing of the complaint. (CDa136-80).

To calculate the value of defendant's goodwill interest, again in a convoluted manner, Mr. Hirschfeld calculated what he determined to be the excess of (i) defendant's actual earnings as averaged over a 5-year period, with certain adjustments he deemed appropriate, over (ii) $675,000, which was the number he determined to be defendant's reasonable compensation based on data he selected from the Altman Weill 2007 Survey of Law Firm Economics. (CDa181-94). He then projected that excess forward over the balance of what he assumed to be defendant's remaining legal career (which he assumed to be age 70), applying a flat annual growth rate of 2.05% (this was a post cross-examination increase from 2% in his initial value), subtracted a 40% combined tax rate, and used an 18% discount rate to arrive at an initial present value of $1,198,770, and a revised present value of $1,185,304. (CDa181-94; CDa195-202).

Evidently confused by Mr. Hirschfeld's changing calculations and testimony, the trial judge ultimately accepted Mr. Hirschfeld's initial calculation, despite the fact that Mr. Hirschfeld had himself revised it during re-direct. (CDa197). Consequently, paragraph 1 of the FJOD ordered defendant to pay plaintiff $175,415 as 50% of the value of his TCA, and paragraph 2 of the FJOD ordered him to pay her $448,500 as 50% of the value of his goodwill interest. (CDa64).

In addition, although the trial judge outlined some of Mr. Hoberman's criticisms of Mr. Hirschfeld's calculation, he never

explained why he believed Mr. Hoberman's criticisms were wrong or Mr. Hirschfeld's initial calculation was right. (CDa34). Instead, after having pre-judged that an equity partner at Lowenstein must have goodwill, the trial judge simply rejected Mr. Hoberman's entire analysis and totally accepted Mr. Hirshfeld's initial calculation. (CDa97).

In vacating the value of defendant's interest in Lowenstein, Judge Lihotz wrote:

> The most straightforward basis for our conclusion is the value of defendant's interest in his law firm, as stated in the final judgment, was taken from Hirschfeld's original opinion without consideration of Hirschfeld's revised testimony. After initially testifying, Hirschfeld distinctly reduced his initial calculations of the TCA and the goodwill component, admitting they were flawed. Inexplicably, the trial judge overlooked this evidence and incorporated the original calculations.

Slutsky, supra, 451 N.J. Super. at 357.

Moreover, in discussing the valuation of goodwill, Judge Lihotz concluded: "Here, a nuanced valuation methodology is required because defendant is an equity partner in a large firm, who generally is not responsible for originations, and who is bound by the firm policies and a shareholder agreement." Id. at 362. More specifically, Judge Lihotz wrote:

> In this matter, any analysis of goodwill must evaluate the firm's shareholder agreement to determine whether it is an appropriate measure of the total firm value, including goodwill. That formula computes an exiting partner's interest, calculated as a portion of the firm's excess earnings. The Court must discern the objectiveness and accuracy of the formula and calculations. When "it is established that the books of the firm are well kept and

> that the value of partners' interest are in fact periodically and carefully reviewed, then the presumption to which we have referred should be subject to effective attack only upon the submission of clear and convincing proofs." (internal citations omitted).

Id. at 362-63.

In finding that the purpose of the TCA is to review the value of a partners' interest and to adjust it annually based on the firm's profits and the individual partner's performance, Judge Lihotz wrote:

> Defendant is a party to a shareholder's agreement with the firm. The agreement includes the firm's obligation to purchase a shareholder's stock when he or she ceases to be employed by the firm, and defines the formula fixing the amount of payment for the interest.

Id. at 357.

Finally, in vacating the award to plaintiff of 50% of the value of defendant's interest in Lowenstein, Judge Lihotz wrote:

> The judge also made no findings when fixing plaintiff's entitlement to defendant's interest in his law firm at fifty-percent. The equitable distribution statute "reflects a public policy that is 'at least in part an acknowledgment that marriage is a shared enterprise, a joint undertaking, that in many ways [ ] is akin to a partnership.'" But, equitable is not synonymous with equal. Our courts must remain true to the legislative mandate expressed in N.J.S.A. 2A:34-23.1, which assures an ordered equitable distribution be "designed to advance the policy of promoting equity and fair dealing between divorcing spouses." This requires evaluation of unique facts attributed to each asset. (internal citations omitted)

Id. at 358.

In the Remand Decision, the remand judge determined that the "figure closest to the true value" of defendant's TCA is $288,954,

which is the average of Mr. Hoberman's value (i.e., $285,000) and Mr. Hirschfeld's revised calculation (i.e., $292,908[4]), and that plaintiff is entitled to 50% of the value. (CDa18-19). However, in so doing, the remand judge noted in footnote 7 that Mr. Hirschfeld erred by including defendant's longevity bonus in his calculation, but the remand judge did not remove the longevity bonus from Mr. Hirschfeld's revised calculation before averaging it with Mr. Hoberman's opinion. (CDa19). Had he removed the longevity bonus from Mr. Hirschfeld's revised calculation, Mr. Hirschfeld's revised calculation would have been reduced to $215,280, which is less than Mr. Hoberman's opinion. (CDa231).

In the Remand Decision, the remand judge determined that the value of defendant's goodwill interest is $501,547.20, and that plaintiff is entitled to 50% of the value. (CDa30). Despite the unambiguous terms of the shareholders agreement, the remand judge found that defendant's TCA "does not account for the entirety of the fair value" of his interest in Lowenstein. (CDa21).

In the Remand Decision, the remand judge noted that plaintiff is entitled to 50% of the value of defendant's interest in Lowenstein because, "[m]ost notable, … nearly all marital assets and liabilities subject to equitable distribution were divided equally among the parties … ." (CDa39).

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[4] Although the remand judge used $292,908, Mr. Hirschfeld's revised calculation was $6 less at $292,902. This point is made only for purposes of clarity.

COUNSEL FEES AND EXPERT FEES

Plaintiff incurred counsel fees (with five different law firms) and expert fees (with six different experts) in the total amount of $1,751,655.93. (CDa41, footnote 31). The trial judge found:

> The Plaintiff precipitated an enormous amount of legal work due to her previously described behavior. She was overwhelmed by the complex legal issues as well as stressed out from the high conflict divorce.

(CDa117). Defendant incurred counsel fees (with only one lead attorney), and expert fees (with only one expert) in the total amount of $836,019.25. (CDa48, footnote 39).

In the FJOD, the trial judge ordered defendant to pay $467,793.38 in counsel fees on behalf of plaintiff to Donahue Hagan, and nothing to any of her other attorneys. (CDa70). In discussing defendant's ability to pay counsel fees and expert fees, the trial judge stated:

> In this case the evidence is overwhelming that the Defendant is extremely well off financially earning in excess of $1,000,000.00 per year as an extraordinarily skilled tax attorney.

(CDa115). The trial judge went on to discuss what he termed defendant's "bad faith":

> While the court admires the Defendant in his deportment throughout trial, his personal philosophy about helping his children financially, and, his extraordinary status in the legal profession, it is abundantly clear that he has taken a bad faith position concerning the alleged loans from the trust and the good will factor of Lowenstein. These two factors most certainly must have

> thwarted any and all settlement sessions and contributed to the extensive delays in this case.

(CDa115).

In vacating the award to plaintiff of counsel fees for Donahue Hagan, Judge Lihotz wrote: "However, we determine certain findings were mistaken, and the need for additional review requires reversal." Slutsky, supra, 451 N.J. Super. at 366.

For example, the trial judge found that defendant was "extremely well-off … earning in excess of $1,000,000 per year." (CDa115). However, Judge Lihotz wrote: "This finding failed to account for ordered obligations, which significantly impact defendant's available income, including alimony and equitable distribution payments along with debts for which defendant was solely responsible." Id. at 366.

Also for example, the trial judge found that defendant had taken positions at trial that were in bad faith. (CDa115). However, Judge Lihotz wrote:

> Next, the judge found defendant's positions regarding the loans and the zero goodwill value in his firm evinced badges of bad faith. This finding is unsupported. The existence of the borrowings was not disputed. At issue was repayment. The position was not fallacious; rather, the proofs were found insufficient. Further, we reversed the findings regarding value of defendant's interest in his firm.
>
> That a party advances a legal position reasonably supported which the court rejects, is not the equivalent of "bad faith."

Id. at 366-67.

In the Remand Decision, the remand judge determined that "it would be unfair to compel [d]efendant to pay for the majority, or even fifty percent (50%) of the fees [p]laintiff incurred, … ." (CDa57). However, he determined that defendant is obligated to pay $487,041.15 to plaintiff, "representing thirty-five (35%) of the $1,509,838.25 in counsel fees that [p]laintiff incurred, … ," and not just those counsel fees that plaintiff incurred with Donahue Hagan. (CDa58).

LEGAL ARGUMENT

I. THE REMAND JUDGE ERRED BY INCORRECTLY VALUING DEFENDANT'S INTEREST IN LOWENSTEIN. (CDa1-58; CDa59-62; 3T)

A. THE REMAND JUDGE ERRED IN VALUING DEFENDANT'S TCA AT $288,954. (CDa1-58; CDa59-62; 3T)

The remand judge simply averaged Mr. Hoberman's value of defendant's TCA and Mr. Hirschfeld's revised calculation because they were, coincidentally, within a few thousand dollars of each other. There was no analysis. Averaging ignores that Mr. Hoberman and Mr. Hirschfeld used significantly different methodologies, that Mr. Hoberman's value was inclusive of any goodwill, and ignores that Mr. Hirschfeld's revised calculation would have been even less if the remand judge had adjusted it as set forth in footnote 7 of the Remand Decision.

First, as to methodologies, the value of defendant's TCA, as calculated by Mr. Hoberman, was a fair and accurate calculation as

of the filing of the complaint of defendant's entire value in Lowenstein. Mr. Hoberman did not utilize the balance in defendant's TCA at the beginning or end of 2008 because neither of those dates would have provided a fair measure of the TCA balance on May 20, 2008. Instead, Mr. Hoberman started with the balance in defendant's TCA at the beginning of 2008 and then subtracted a pro-rated share of the decrease in the balance over the course of the year to arrive at a pre-tax balance of approximately $620,000. Alternatively, Mr. Hoberman could have started (but did not) with the balance in defendant's TCA at the beginning of 2008 and then subtracted the actual distributions made to or on behalf of defendant, which would have resulted in a number more favorable to defendant, demonstrating that his valuation was intended to produce an equitable result and not a result that favored defendant.

Mr. Hirschfeld chose to value defendant's TCA using a convoluted method in which he artificially increased and projected out the value of defendant's TCA until age 70, subtracted taxes, and then discounted the after-tax value back to present value, initially calculating that the value of defendant's TCA was $350,830, but then reducing this number to $292,902 after several errors were pointed out to him during trial.

Second, in footnote 7 of the Remand Decision, the remand judge indicated that Mr. Hirschfeld was incorrect in adding the longevity bonus that was not fully vested to his revised calculation of the

value of defendant's TCA. If the longevity bonus was not included in Mr. Hirschfeld's revised calculation, his revised calculation would have been reduced from $292,904 to $215,280 (i.e., approximately $60,000 less than Mr. Hoberman's value for defendant's entire interest in Lowenstein).

Specifically, Mr. Hirschfeld started with a projected TCA value at age 70 of $898,753, but then added the longevity bonus of $324,068, to have a total projected TCA value at age 70 of $1,222,821. Mr. Hirschfeld then spread the value over a four-year payout, deducted 35.5% in taxes (which itself was unreasonably low given federal and New Jersey tax law), and applied a present value factor to arrive at $73,226 per year, or $292,904 total.

However, if the projected TCA value at age 70 were only $898,753 (because the longevity bonus was removed), and if Mr. Hirschfeld spread that value over the same four-year period, deducted the same 35.5% in taxes, and applied the same present value factor, he would have arrived at a present value of $53,820 per year, or $215,280 total. (CDa231).

Based upon the foregoing, it is respectfully submitted that the remand judge erred in valuing defendant's TCA. It is submitted that if Mr. Hoberman's value is not going to be used for defendant's entire interest in Lowenstein, but rather, as maintained by Mr. Hirschfeld and adopted by the remand judge, that defendant's TCA and goodwill are going to be separate components,

then the value of defendant's TCA should be $215,280 (i.e., Mr. Hirschfeld's value after removing the longevity bonus).

B. THE REMAND JUDGE ERRED IN FINDING AND VALUING DEFENDANT'S GOODWILL AT $501,547.20. (CDa1-58; CDa59-62; 3T)

There are two New Jersey Supreme Court cases dealing with the topic of attorney goodwill in the context of equitable distribution, Stern v. Stern, 66 N.J. 340 (1975), and Dugan v. Dugan, 92 N.J. 423 (1983). In both cases, the Court determined that under the particular facts the attorney spouse did have goodwill that was subject to equitable distribution. However, to the extent these cases are relevant to this matter, they support defendant's assertion that under the facts of this case no goodwill is present.

In Stern, the Court respected the terms of a law firm's partnership agreement for purposes of determining goodwill in the context of equitable distribution. Stern, supra, 66 N.J. at 345-46. The Court held that in such a case, the partnership agreement, particularly those provisions governing the payment to be made if the attorney spouse's departure from the firm was caused by his death, would constitute presumptive evidence of the value of the partnership interest. Id. at 346-47. On the facts in Stern, the partnership agreement provided that a very substantial amount ($167,500 in 1971 dollars) above and beyond the book value of Mr. Stern's partnership interest would have been paid for his interest in the firm upon his death. Id. at 346. The Court used that amount

as a presumptive value, allowing it to be challenged by either party if not reflective of true value. Id. at 346-47.

Although the methodology utilized in Stern (i.e., respecting the terms of a binding, well-maintained shareholders agreement) is controlling in this case, in one crucial aspect the particular circumstances in Stern differ greatly from those in this case. Mr. Stern was a dominant partner in his firm, had been one of its founders, and was instrumental in establishing the firm and its reputation. In contrast, defendant became a member of an already thriving practice long after the firm had been established, and was recognized by the trial judge as being no more than a "worker bee" (albeit one who was extremely skilled in a combination of very technical and difficult specialty areas). More importantly, the firm's partnership agreement in Stern provided for the payment of an additional amount (which at least in Mr. Stern's case, was very significant) above and beyond the book value of the firm, and which the firm was willing to bind itself to pay. In defendant's case, the Lowenstein agreement provided for no such additional payment for a departing member's interest in the firm. (CDa20). Thus, under a plain reading of Stern, the presumptive value of any additional goodwill for defendant's interest in Lowenstein would be zero, a fact that neither the trial court or remand judge ever considered.

Dugan involved a solo practitioner, and the opinion makes it clear that its holding is directly applicable only in that

situation. Dugan, supra, 92 N.J. at 432-33[5]. One reason for this limitation is that in the case of a solo practitioner, if there were to be any goodwill to the law practice separate and apart from the value of the attorney's future earning power, the solo involved would by necessity possess that goodwill, would have been the one who individually developed that goodwill over the years, and would have been the one to retain the goodwill. In a solo law firm, there is obviously no binding written agreement that can define that individual's interest.

That is hardly the case in a large law firm like Lowenstein where, even if one were to believe that there could be goodwill for the firm as a whole (which defendant strongly contests), there is no reason to assume that any particular member of the firm would have been instrumental in having developed it or would currently possess any share of it. Consistent with this, when a new member of Lowenstein first becomes a partner, he pays nothing whatsoever for goodwill. Neither does he receive any amount for goodwill on his eventual departure from the firm, even if, as will be true in defendant's case, the departure occurs decades later. Further, by reason of the ethical rules governing the legal profession in the United States, as well as the practical and business considerations

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5 Dugan's focus is on solo practitioners, where obviously no arm's length governance agreement can exist, a point underscored by the fact that in his opinion, Justice Schrieber refers to "sole" or "individual" practitioners at least 8 separate times.

stemming from the fact that noncompete agreements are not permitted in the legal profession, defendant certainly could not seek to sell any purported goodwill to a third party while a partner, either alone or in conjunction with the other members of the firm.

Judge Lihotz wrote extensively about valuing goodwill in the context of a law practice, ultimately concluding: "Here, a nuanced valuation methodology is required because defendant is an equity partner in a large firm, who generally is not responsible for originations, and who is bound by the firm policies and a shareholder agreement." Slutsky, supra, 451 N.J. Super. at 362. More specifically, Judge Lihotz wrote:

> In this matter, any analysis of goodwill must evaluate the firm's shareholder agreement to determine whether it is an appropriate measure of the total firm value, including goodwill. That formula computes an exiting partner's interest, calculated as a portion of the firm's excess earnings. The Court must discern the objectiveness and accuracy of the formula and calculations. When "it is established that the books of the firm are well kept and that the value of partners' interest are in fact periodically and carefully reviewed, then the presumption to which we have referred should be subject to effective attack only upon the submission of clear and convincing proofs." (internal citations omitted).

Ibid.

As the Supreme Court found in Stern, and as this Court found here, it remains defendant's position that his shareholders agreement is presumptive evidence of the value of his interest. Moreover, no evidence, let alone clear and convincing evidence, was introduced at trial that would even begin to rebut this

presumption. To the contrary, all of the evidence introduced at trial overwhelmingly confirmed that under the facts of this case the presumption was in fact completely consistent with the economic reality. While Mr. Stern's estate would have received the additional value had he died while at the firm, in no event would defendant or his estate have received anything other than his TCA on his death or his departure from Lowenstein.

Based upon the testimony of Lowenstein's Chief Administrative Officer, David Casey, Judge Lihotz wrote: "In essence, the TCA represents the equity partner's interest in the firm." Slutsky, supra, 451 N.J. Super. at 351. Thus, it remains defendant's position, as opined by Mr. Hoberman, that his interest does not have a separate goodwill value but instead that any such goodwill value is included in his TCA.

Moreover, Judge Lihotz concluded that the trial judge "misunderstood Hoberman's conclusion, as suggesting that goodwill did not exist for the firm." Id. at 362. Judge Lihotz wrote:

> Actually, Hoberman's opinion asserted the TCA of each equity partner accounted for any goodwill. Further, [defendant], who was not an originator but a worker in a highly specialized legal area, was actually paid what a similarly skilled lawyer would be paid. Thus, defendant's compensation matched his earning capacity, nothing more. This view considered whether defendant's 'future earning capacity has been enhanced because reputation leads to probable future patronage from existing and potential clients' and concluded it did not. Accordingly, there was no additional component of goodwill.

Ibid.

There was no evidence presented to contradict the fact that the books and records of Lowenstein are well kept and that the value of a partner's interest is in fact periodically and carefully reviewed. The computation of defendant's TCA as of each annual measurement date was clearly accepted as valid by plaintiff, defendant, Mr. Hirschfeld, Mr. Hoberman, and the trial judge. This undeniably constitutes implicit acceptance of the validity and accuracy of the TCA. Moreover, this is exactly the purpose of the TCA, which is very precisely reviewed and adjusted annually based on the firm's profits and the actual and constructive distributions to each individual partner. The adjusted balances of each equity partner are then disseminated to all equity partners. Judge Lihotz wrote:

> Defendant is a party to a shareholder's agreement with the firm. The agreement includes the firm's obligation to purchase a shareholder's stock when he or she ceases to be employed by the firm, and defines the formula fixing the amount of payment for the interest.

Id. at 351.

In the absence of clear and convincing proof to the contrary, defendant's shareholders agreement controls what he will receive when he leaves the firm, which is his TCA.

However, in the Remand Decision, the remand judge went above and beyond defendant's shareholders agreement (which for purposes of this discussion would include defendant's employment agreement or any other binding document clearly spelling out what defendant

would receive on his departure from the firm for any reason) absent clear and convincing proof to create goodwill. The remand judge found that the value of defendant's interest in Lowenstein is comprised of his TCA "and any goodwill attributable to [d]efendant that is not accounted for by the TCA system." (CDa20). The remand judge then found that "the TCA system itself does not account for the entirety of the fair value of [d]efendant's interest in the firm." (CDa21). However, as Judge Lihotz repeated, as a member of a large law firm, absent clear and convincing proof, defendant's TCA provides for his only interest in his firm. Slutsky, supra, 451 N.J. Super. at 362. Certainly, in a large law firm with as long a history as Lowenstein, and where there has never been an instance where a departing member of Lowenstein had received any amount other than the value of his or her TCA, the authority of the New Jersey Supreme Court would require clear and convincing proof of the existence of some additional value outside of defendant's TCA that he may ultimately receive.

Ultimately, the remand judge provided three unconvincing explanations for finding goodwill, none of which are clear and convincing proof of the existence of some additional value outside of defendant's TCA.

First, the remand judge wrote that "there are other compensation-related provisions in [d]efendant's agreements with the firm that exist separate and apart from the TCA system."

(CDa21). The remand judge then cited "the existence of the longevity bonus, and of an alternate mode of payment via salaried income by way of senior membership status." (CDa21).

The longevity bonus is not separate and apart from the TCA system. The longevity bonus, like all other aspects of compensation, is definitely an additional component of the allocations to a partner's TCA for services rendered. The longevity bonus is computed solely with reference to the retiring partner's prior allocations to the TCA for certain specified years. Then, once accrued, the bonus amount is credited to the partner's TCA as additional compensation and distributed with the other balances in, and in accordance with the restrictions of, the TCA. This is evidenced by the fact that Mr. Hirschfeld added the longevity bonus to the value of defendant's TCA (despite the fact that it had not accrued as of the date of the complaint).

Senior membership status does not provide any additional value outside of the TCA, and it in no sense represents additional compensation for what the partner has done while an equity partner, nor a material benefit of being an equity partner. Instead, when an individual continues to work under senior membership status, that individual is no longer a participant in the TCA and is not paid any particular guaranteed amount. Rather, the individual may work and get paid for services the individual actually provides while in such status, and even then, only at a rate that the firm agrees is

the fair market value of the individual's services at the time the services are rendered. Consistent with the part-time status and significant reduction in client management and internal governance responsibilities that almost always accompanies this new status, this change in working status would usually result in a significant decline in income. There is no excess economic benefit to this arrangement; it represents merely an opportunity to work with a reduction in schedule and responsibilities for a short period of time for a fair salary, with fairness measured by the individual's productivity at that time as agreed by the individual and the firm. Moreover, there is no assurance that because the individual wants to work, there will be any work for the individual to do. Without work, the individual's tenure will be quite short and compensation quite limited.

Second, the remand judge wrote that defendant's receipt of certain special allocations (in only two of the 24 years that he had been equity partner, with those two being related to the arrival of one particular lateral partner) demonstrates that he shares "in the profits of the firm by virtue of his status as an equity partner." (CDa21-22). This is an overly simplistic way of analyzing the special allocations, and ignores that the sharing of the contingency fee in large part represents not a pure windfall to the equity partners intended as a return on an equity investment, but rather as compensation for having funded the contingency case.

It also ignores that during the period when the case was being conducted, the partners absorbed the substantial risk of failing to collect anything for their investment in the case if the suit ultimately failed to yield an excess return.

Specifically, when the new partner joined Lowenstein with the two contingency cases referenced by the remand judge, the remaining equity partners were required to fund those cases by sacrificing a substantial amount of allocations to their TCAs, with no guarantee of a return. At that time, because defendant was extremely in need of cash, largely to accommodate plaintiff's astronomical spending, he specifically asked Lowenstein's Chief Financial Officer if he could opt out of participating in the two contingency cases and instead receive distributions from his TCA undiminished by the investments in those cases. His request was flatly denied. In effect, by sharing in the results of those two contingency cases with special allocations, the equity partners, like it or not, were being compensated for investing the cash necessary to fund those cases, with the risk that little or no return on investment would be received.

Third, the remand judge wrote that defendant "received a substantial amount of excess income attributable to his status as an equity partner." (CDa22). Defendant does not receive excess income as a result of being an equity partner. Rather, defendant is paid according to what Lowenstein's Allocation Committee determines

he is worth, which could be more or less than other equity partners, and most equity partners will usually, although not always, be greater than most non-equity partners. Moreover, defendant was made an equity partner because of his perceived skill set and value to Lowenstein more than 40 years ago when he was made a partner as of January 1, 1984, a time when there was only class of partnership at Lowenstein. Defendant does not receive any of his income because he became an equity partner by winning a random lottery or some similar stroke of blind luck. He receives the income he does because his value, as perceived by Lowenstein on a year-by-year basis, is such that it warrants his being compensated at a certain level, not because anyone at Lowenstein has ever wished to bestow upon him some hidden but valuable equity interest that would generate dividends or some similar passive income that would flow to him without his having to work to earn it each year.

In addition, the excess income analysis remains flawed for numerous reasons, including, but not limited to, its use at all in a case so closely analogous to Stern, its determination of defendant's income, and its determination of defendant's reasonable compensation. Defendant is not a solo practitioner like Mr. Dugan, but rather, as the Judge Lihotz wrote, he is "an equity partner in a large firm, who generally is not responsible for originations, and who is bound by the firm policies and a shareholder agreement." Slutsky, supra, 451 N.J. Super. at 362.

The remand judge failed to consider Mr. Hoberman's position and his critique of Mr. Hirschfeld's methodology. Although Mr. Hoberman engaged in a long discussion of how the excess compensation method would be applied were it to be used, he in no sense advocated it as the proper method for valuing defendant interest in Lowenstein. Rather, he discussed it only to show why Mr. Hirschfeld was incorrect in his application of the method. Mr. Hoberman himself, being consistent with the precedent of Stern and Dugan, determined the value of defendant's interest based on the controlling shareholders agreement. As Judge Lihotz wrote: "Therefore, the TCA account alone represented the true value of defendant's interest in the firm, and there was no additional goodwill component." Slutsky, supra, 451 N.J. Super. at 353-54.

In going beyond the terms of defendant's shareholders agreement and fashioning a result by conducting his own reasonable compensation analysis under Dugan, supra, the remand judge justified conducting the analysis based upon a misunderstanding of Mr. Hoberman's opinion, then repeated an error made by Mr. Hirschfeld, and then further compounded that error by making his own errors.

First, to justify conducting his own reasonable compensation analysis, the remand judge stated: "Both experts arrived at their respective conclusions using a reasonable compensation analysis, discussed below." (CDa21). Mr. Hoberman did not conduct a

reasonable compensation analysis for purposes of valuing defendant's interest in Lowenstein. Instead, Mr. Hoberman opined that the entire value of defendant's interest in Lowenstein is the value in his TCA. However, to demonstrate why Mr. Hirschfeld's reasonable compensation analysis was flawed, Mr. Hoberman conducted his own reasonable compensation analysis.

Second, in conducting his reasonable compensation analysis, the remand judge repeated an error made by Mr. Hirschfeld with respect to defendant's actual compensation. In rendering his opinion, Mr. Hoberman used $830,000 as defendant's actual compensation. (CDa24). Mr. Hirschfeld, on the other hand, used $896,286. (CDa24). The greater defendant's actual compensation, the greater the likelihood of excess compensation, and the greater the likelihood and value of the goodwill. The remand judge chose to use $896,286. (CDa29). However, in so doing, the remand judge repeated the same error made by Mr. Hirschfeld.

Specifically, the remand judge, like Mr. Hirschfeld, included as part of defendant's actual compensation the interest paid by Lowenstein to the partners on the balances in their TCAs. This interest was paid for Lowenstein's use of the partner's capital while it was held in the TCA rather than paid out after having been allocated to the partner, itself a function of the firm's unique system where profits were allocated under an accrual, rather than cash, method of accounting. In other words, these amounts were

interest paid to reflect the time value of money during the period when Lowenstein was, itself, utilizing the balance of unpaid compensation previously earned and accrued to defendant's TCA. These amounts clearly were not current compensation for services being newly provided. As such, this interest should not have been included in defendant's actual compensation and then used to create goodwill. If the interest is removed from defendant's actual compensation, his actual compensation would be reduced to $832,988, which is similar to the $830,000 used by Mr. Hoberman.

Third, in conducting his reasonable compensation analysis, the remand judge applied a highly artificial methodology based on fitting certain criteria (the sole virtue of which is nothing more than the fact that they are objectively quantifiable and available) into an arbitrary set of compensation boxes, without consideration of defendant's unique individual abilities, contributions to the product offered by Lowenstein to its clients, and other characteristics that led Lowenstein's Allocations Committee to decide how much his particular contributions to profits were worth in a given year.

Specifically, the remand judge chose to analyze defendant's reasonable compensation by selecting three survey groups within the Altman Weil 2008 Survey of Law Firm Economics: (1) State by Year admitted to Bar - $846,445; (2) Firm Size - $814,007; and (3) Individual Non-Litigation for Tax Law - $703,823. (CDa27-28). The

remand judge then weighted the three groups unequally, with the first and second groups counting for only ten (10%) percent each and the third group counting for eighty (80%) percent. (CDa28-29). By choosing the third group, and by weighting the third group as eighty (80%) percent of the total, the remand judge erroneously drove down the reasonable compensation amount to $729,103.60. (CDa28-29). It appears that this particular weighting was selected simply to reach a desired result, and not because it has any particular validity.

Not only was the third group the lowest of the three groups by more than $100,000, but it also essentially ignores that defendant is a highly skilled attorney and an expert in both complex tax and estate planning matters, two separate areas of practice, a combination of skills that magnifies defendant's value to Lowenstein, a fact that the remand judge seemingly admitted but then largely ignored. Specifically, in footnote 18 of the Remand Decision, the remand judge attempted to justify his inclusion and heavy weighting of the third group by stating:

> To the extent that the reasonable compensation figure utilized by the Court may be slightly inflated due to the inextricable integration of equity partner compensation data in these survey groups, the Court finds that any such increase to be appropriate given that Defendant specializes in both tax law and trust and estate law, thus making his reasonable compensation higher than a non-equity partner that only specializes in tax law.

(CDa28-29). In effect, although the remand judge recognized that defendant is an expert in both complex tax and estate planning

matters, he included, and weighted most heavily, a survey group that only included tax attorneys, which undeniably drove down the reasonable compensation. In addition, although the remand judge recognized that defendant is an expert in both complex tax and estate planning matters, he considered only that defendant's reasonable compensation would be "higher than a non-equity partner that only specializes in tax law", not that defendant's reasonable compensation would be higher than **any** partner, equity or non-equity, that only specializes in tax law.

Finally, even if it could be determined that defendant's interest in Lowenstein includes a goodwill value separate from his TCA, the remand judge erred by not deducting income taxes from the goodwill value. Unlike the owner of a business who is able to sell his business and declare the sale proceeds as a capital gain, if defendant is to realize this goodwill value it will undeniably be in the form of income subject to ordinary tax rates. Mr. Hirschfeld himself determined that defendant's goodwill would be subject to a 40% tax rate and reduced his calculation accordingly to arrive at his end result. (CDa187-88; CDa191). Using this same 40% tax rate (although at trial defendant demonstrated why this rate was too low), the goodwill calculated by the remand judge would be reduced from $501,547.20 to $300,928.32. Again, it remains defendant's position that there should be no additional value for goodwill added at all, but if there were, given that every dollar of such

goodwill realized over the years would be taxable as ordinary income, in computing such goodwill value it would undeniably need to be tax effected, just as Mr. Hirschfeld did himself.

Based upon the foregoing, it is respectfully submitted that the remand judge erred in finding and valuing defendant's goodwill, and that the value should be vacated.

II. THE REMAND JUDGE ERRED BY AWARDING 50 PERCENT OF THE ERRONEOUS VALUES OF DEFENDANT'S INTEREST IN LOWENSTEIN TO PLAINTIFF. (CDa1-58; CDa59-62; 3T)

The equitable distribution statute empowers the court to allocate marital assets regardless of ownership. N.J.S.A. 2A:34-23. The phrase "equitable distribution" simply directs and requires that the matrimonial judge apportion the marital assets in such a manner as will be just to the parties concerned under all of the circumstances of the particular case. See Painter v. Painter, 65 N.J. 196 (1974). "Equitable distribution is not simply a matter of mechanical division of marital assets." Stout v. Stout, 155 N.J. Super. 196, 205 (App. Div. 1977). "The word 'equitable' itself implies the weighing of the many considerations and circumstances that are presented in each case." Ibid.

In effectuating an equitable distribution of property, the remand judge was obligated to consider the statutory factors. See N.J.S.A. 2A:34-23.1; Painter, supra, 65 N.J. at 211; Rothman v. Rothman, 65 N.J. 219, 233-34 (1974).

Defendant is a partner in a large law firm who is ethically prohibited from selling his interest or otherwise deriving value from his interest (except by his work efforts during the remainder of his career). As a result, unlike any other business owner who is able to sell his or her business and realize the value, the only value that will ever be realized by defendant is his ongoing income stream. Recognizing this important distinction demonstrates exactly why it is inequitable to award plaintiff 50% of the value of defendant's interest.

In Steneken v. Steneken, 183 N.J. 290 (2005), by a 4-3 decision, the New Jersey Supreme Court determined that in New Jersey, unlike many other states, "double-dipping" would be permitted, and a business owner could be obligated to pay alimony from his income stream, and also be obligated to pay equitable distribution of the value of the business that was calculated using the same income stream. However, given this double dipping factor, it was recognized that it would be inequitable to award the wife alimony and 50% of the value, and instead the wife was awarded alimony and only 35% of the value.

Mr. Steneken had the ability to sell his business and realize the value ascribed to it, while also continuing to earn income by working after the sale. In other words, although Mr. Steneken was required to pay 35% of the value to his wife up front, he could at

least sell the business at any time, thereby turning the value of his business into cash.

Defendant is in a considerably more tenuous position than Mr. Steneken. Unlike Mr. Steneken, defendant is not able to sell his interest in Lowenstein and, as a result, notwithstanding the requirement that he pay plaintiff a percentage of the value of his interest up front, he can only realize the value ascribed to his interest as he continues to work and get paid through his TCA.

By awarding plaintiff a percentage of the value of defendant's interest, she receives all of the benefit and none of the risk of realizing such value over the course of defendant's remaining working years. Instead, defendant is forced to assume the risk by paying plaintiff a percentage of the value of his interest up front based on the assumption that the full value will be realized over time. Since equitable distribution is not modifiable, if anything ever happened that prevented defendant from actually realizing the value ascribed to his interest, the loss would be all on him. This factor should compel an equitable distribution award materially below 50%.

There is yet another compelling equitable consideration supporting the proposition that granting plaintiff 50% of defendant's interest would be unconscionably inequitable. An award to plaintiff of 50% assumes that plaintiff and defendant are equal partners in defendant's future income stream. To whatever extent

that this may be a fair result prior to the divorce, when defendant should presumably have been benefitting from plaintiff's efforts to promote their common welfare, the situation becomes far different after plaintiff files for divorce. While plaintiff need not do anything to receive a payment up front for her share of defendant's future income stream, defendant must do 100% of the future work. This is not a "marital partnership", but rather it is a grossly inequitable allocation of defendant's future income stream.

It is akin to the following hypothetical. Partners A and B have been equal (50-50) partners in a personal service enterprise for a period of time. Partner B informs partner A that she is retiring from the enterprise, that she will no longer contribute to the enterprise, but that she expects to receive 50% of partner A's future income stream. While partner A may be willing to pay partner B some fair amount for the value of partner B's interest in the enterprise, partner A would not be willing (or expected) to provide partner B with 50% of his future income stream that he alone would be working to generate over the rest of his career. At the very least, a significant discount from 50% would be equitable.

Finally, in justifying the award of 50%, the remand judge noted in footnote 8 that there was no "compelling reason to deviate from equally distributing the total value of [d]efendant's interest in the firm, …" because "[m]ost notable, … nearly all marital assets and liabilities subject to equitable distribution were

divided equally among the parties … .” (CDa19). However, equitable distribution of an income stream is quite different than equitable distribution of any other asset that is owned free and clear, such as the net sale proceeds of the former marital home or defendant’s retirement accounts, because non-income stream assets do not require defendant to keep working and to assume all of the risk of becoming unable to do so. Indeed, at no time did defendant object to an equal distribution of the non-income stream assets.

Based upon the foregoing, it is respectfully submitted that the remand judge erred in awarding plaintiff 50% of the value of defendant’s interest in Lowenstein, and that the award should be vacated or modified.

III. THE REMAND JUDGE ERRED BY COMPELLING DEFENDANT TO PAY $487,041.15 IN COUNSEL FEES ON BEHALF OF PLAINTIFF FOR ALL OF HER ATTORNEYS. (CDa1-58; CDa59-62; 3T)

In compelling defendant to pay nearly $500,000 in counsel fees for all of plaintiff’s attorneys, the remand judge was arbitrary and capricious, and egregiously abused his discretion, resulting in a gross miscarriage of justice. He exceeded the scope of the remand, failed to address the relevant factors, and even when he attempted to do so superficially, he applied them in an irrational way having no basis in law, fact or equity.

In assessing the reasonableness of fees, a court is instructed to “assess what legal services reasonably competent counsel would consider as required to vindicate the protected legal or

constitutional rights." Szczepanski v. Newcomb Medical Center, Inc., 141 N.J. 346, 366 (1995). See also Mayer v. Mayer, 180 N.J. Super. 164, 169 (App. Div. 1981) ("Fundamentally, …, it is necessarily implicit that there may be allowed only such fees as represent reasonable compensation for such legal services performed as were reasonably necessary in the prosecution or defense of the litigation.").

Assessing the reasonableness of the fees obligates a court to critically review the nature and extent of the services rendered and the reasonableness and necessity of the time spent rendering the services. See Mayer, supra, 180 N.J. Super. at 169 ("The fee should not be fixed …, without critical review and examination of the nature and extent of the services, and multiplying the total number of hours by the charges fixed in a retainer agreement made between the wife and her attorney -- to which charges the husband never consented or agreed."). See also Argila v. Argila, 256 N.J. Super. 484, 492 (App. Div. 1992) ("Furthermore, our courts must carefully consider the rates charged when a fee request is made, especially where, as here, a defendant who has no voice in the selection of counsel or negotiating their rate is or may be required to pay all or a portion of that fee.").

Pursuant to paragraph 24 of the FJOD, defendant was obligated to pay $467,793.38 in counsel fees to plaintiff for Donahue Hagan. (CDa20). Defendant was not obligated to pay any other counsel fees

to Plaintiff for any other attorneys, such as counsel fees for: (A) Budd Larner; (B) Michael E. Spinato, Esq., (C) Cary Cheifetz, Esq., and (D) Robert A Knee, Esq. With respect to these firms/individuals, trial judge wrote:

> The fees lien amount previously assigned to Budd Larner, will be escrowed by counsel and sequestered until the fee lien trial. Mr. Spinato was already paid. Mr. Cheifetz was already paid. Ms. Joseph was already paid $6,434.00. Mr. Knee's fee was reviewed and the court approved $34,383.79. No further fee is approved by the court for Mr. Knee.

(CDa117-18).

Defendant appealed only the counsel fees that he was obligated to pay to plaintiff for Donahue Hagan. Plaintiff did not cross-appeal the denial of her requests that defendant pay counsel fees to her for the other attorneys. As a result, the only counsel fees subject to the remand were those defendant was obligated to pay to plaintiff for Donahue Hagan.

However, the remand judge ordered defendant pay 35% of the $1,509,838.25 in total counsel fees that plaintiff incurred with respect to all of her attorneys, including: (A) $929,544.58 for Donahue Hagan; (B) $445,808.00 for Budd Larner; (C) $39,971.43 for Mr. Spinato; (D) $7,500 for Mr. Cheifetz; and (E) $87,014.24 for Mr. Knee. Such an award goes beyond the scope of the remand. The trial judge had already denied awards to plaintiff for every attorney other than Donahue Hagan. Moreover, even if an award was going to made to plaintiff for Mr. Knee, the trial judge had

already limited Mr. Knee's fees to $34,383.79 (which is the amount that had already been paid, including the $15,000 that defendant had paid and should receive credit for if his fees are in play), not the $87,014.24 used by the remand judge. If 35% is ultimately the correct percentage, defendant's obligation should have been limited to 35% of the $929,544.58 that plaintiff incurred with Donahue Hagan.

The fact that the only counsel fees subject to the remand are the counsel fees that defendant is obligated to pay to plaintiff for Donahue Hagan is further evidenced by the second error. In directing defendant to pay 35% of the $1,509,838.25 in total counsel fees that plaintiff incurred with all of her attorneys, the remand judge ignored that defendant had never been afforded an opportunity to challenge the fees of the other attorneys. Specifically, during the hearing for Donahue Hagan's charging lien, the remand judge noted that charging lien hearings are typically done on motion and without objection from the non-contracting spouse. Defendant responded that the objection is not typically made because the fee shifting is done in most cases before the charging lien hearing ever takes place. As a result, the non-contracting spouse would not have any basis to object to a fee charging lien if none of the fees subject to the charging lien had been shifted to the non-contracting spouse in the first place. In

fact, this is exactly what occurred with Budd Larner and is why defendant never objected to Budd Larner's fees:

> MR. DANAHER: Right. And typically you don't get the objection because the fee shifting has already been done. And that's what happened with Budd Larner. We didn't object to Budd Larner's fee hearing because the fee shifting part of that had already been done.

(1T50:19-23). Defendant never needed to object to Budd Larner's charging lien or request a Mayer hearing for Budd Larner's fees because the trial judge did not shift any of Budd Larner's fees to him in the FJOD. The trial judge denied plaintiff's request to shift Budd Larner's fees to defendant, and plaintiff failed to cross-appeal said denial. The charging lien hearing came later.

If Budd Larner's fees were even going to be considered in the award, then defendant should have been afforded an opportunity to address the reasonableness, or lack thereof, of their fees, including, but not limited to: (A) their attempt to record mortgages against the former marital home to secure loans from plaintiff's family members to pay plaintiff's fees in violation of an order; (B) their inclusion of more than $23,000 in disbursements for "in-office copying"; (C) their inclusion of more than $8,000 in automatic surcharges for "file maintenance"; and (D) their inclusion of more than $37,000 in interest charges at the excessive rate of 12% compounded monthly. As to the latter, in footnote 31 of the Remand Decision, the remand judge held:

> However, the Court shall not consider any accrued interest when addressing this issue because [d]efendant

> should not be held responsible for [p]laintif''s nonpayment of fees, nor her inability to negotiate affordable payment plans with her various attorneys or to otherwise mitigate the accrual of interest charges.

(CDa41). However, the remand judge did not review Budd Larner's fees to exclude any interest charged.

Based upon the foregoing, it is respectfully submitted that the trial judge erred in compelling defendant to pay $487,041.15 in counsel fees to plaintiff for all of her attorneys, and that the award should be vacated or modified to exclude all attorneys other than Donahue Hagan.

CONCLUSION

Based upon the foregoing, it is respectfully submitted that defendant's appeal should be granted in its entirety.

Respectfully submitted,

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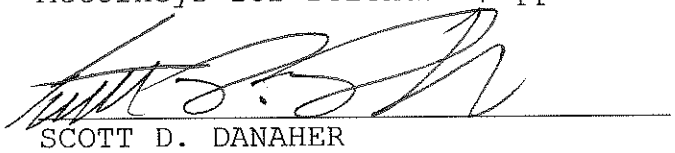

SCOTT D. DANAHER

DATED: April 2, 2025

Superior Court of New Jersey

Appellate Division

Docket No. A-00922-24T4

NANCY G. SLUTSKY,	:	CIVIL ACTION
	:	
	:	ON APPEAL FROM A
	:	FINAL ORDER OF THE
Plaintiff-Respondent,	:	SUPERIOR COURT
	:	OF NEW JERSEY,
	:	CHANCERY DIVISION,
vs.	:	FAMILY PART,
	:	MORRIS COUNTY
	:	
	:	DOCKET NO. FM-14-1535-08
KENNETH J. SLUTSKY,	:	
	:	Sat Below:
	:	
Defendant-Appellant.	:	HON. JAMES M. DEMARZO,
	:	P.J.F.P.
	:	

BRIEF FOR PLAINTIFF-RESPONDENT

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PRELIMINARY STATEMENT

Plaintiff-Respondent ("Plaintiff") does not dispute that, as stated in Defendant-Appellant's ("Defendant") Brief, "the history of this divorce matter has been torturous...".

Similarly, the proceeding in the lower court and the issues on this appeal all revolve around what Defendant refers to as the "Remand Decision" and the "Amended Order"; that Decision and Order were based upon this Appellate Division's previous Decision and Order in Slutsky v Slutsky, 451 N.J. Super. 332, 167 A.3d 660 (App. Div 2017). Where the parties "part ways" is that the Remand Decision and Amended Order, as to the issues involved on this Appeal, reflect the Remand Judge in the lower court "getting it right".

With all due respect, it is because the Remand Judge followed the directions of this Court in Slutsky v Slutsky, supra, that Defendant, once again the "disgruntled litigant", hopes that this Appellate Division will modify what the Remand Decision and Amended Order did. Ironically, at page 1 of Defendant's Brief, he states that "Defendant simply seeks to have this matter concluded, once and for all...". However, what Defendant and his attorneys spend 48 pages doing is to make every effort to avoid having "this matter concluded, once and for all". In fact, if this Court were to agree with Defendant, then this case, which commenced in 2008, would once again have

to be remanded. If the Remand Judge then correctly rules again, inevitably, Defendant would once again return to this Court.

The Remand Judge did as instructed by this Appellate Division in Slutsky v. Slutsky, supra., by correctly ruling on the following: The value of Defendant's partnership interest in Lowenstein on the 2008 divorce filing date, the correct percentage (50%) that Plaintiff should receive of the value of Defendant's partnership interest, and the share percentage of Plaintiff's legal fees that should be paid or reimbursed by Defendant.

In fact, as to that third component, the Remand Judge, in the Remand Decision and Amended Order, ordered Defendant to pay only 35% of all of Respondent's legal fees, or approximately half of all of the legal fees billed and sought by her trial attorneys, Donahue Hagan Klein & Weisberg, LLP ("Donahue Hagen"), exclusive of interest. Rather than appeal that part of the Remand Decision and Amended Order, Defendant should be rejoicing; under the undisputed facts of this case and the applicable law, because Defendant is in such superior financial circumstances than Plaintiff, he should have been ordered to pay a larger percentage of Respondent's attorney's fees.

Therefore, as to the attorney's fees aspect of Defendant's appeal, it should be readily affirmed, since, as proven by the Record in this case, Defendant "got off easy".

STATEMENT OF RELEVANT PROCEDURAL HISTORY

As noted in Defendant's Brief, it was over five years after this divorce case was filed by Plaintiff, that this case went to trial. The trial lasted 19 days and concluded on March 11, 2014. (CDa76) [1] After the appropriate written submissions, the Judge issued a Final Judgment of Divorce ("Judgment"), (CDa 63-70), and then an Amended Final Judgment of Divorce (CDa 119-121) and a written opinion based on the trial ("Opinion"). (CDa 122-135). There was motion practice by both parties, asking the Court to modify the Judgment issued by the Court. (CDa119-135).

On July 28, 2014, the trial Judge amended the final Judgment of Divorce ("Amended Judgment"), as the Court ruled upon the motions and cross-motions of the parties. (CDa 119-122).

Parts of the Amended Judgment which Defendant appealed from directly impact upon the current appeal, because Defendant appealed the following parts of the Amended Judgment: valuing Defendant's interest in his law firm Lowenstein at $1,247,830, and awarding Plaintiff 50% of the value of Defendant's partnership interest. Slutsky v Slutsky, 451 N.J. Super. 332 (App. Div. 2017).

[1] All references to "CDa" refer to Defendant's Confidential Appendix.

While there were other issues as to which Defendant previously appealed from, the only other issue which Defendant appealed from and was determined in the prior appeal, which directly impacts upon the current appeal, was the Amended Judgment's award of $457,793.38 of counsel fees for Donahue Hagen. Plaintiff cross-appealed, but the issues raised there are not related to the current appeal. Slutsky v Slutsky, 451 N.J. Super. 373.

On August 8, 2017, this Appellate Division ruled as to all of the issues raised by the parties' appeal and cross-appeal. It is this Court's Remand Order in Slutsky v. Slutsky, supra., which is now the subject of this appeal.

Specifically, this Court vacated and remanded the issue of the value of Defendant's interest in Lowenstein. In doing so, this Appellate Division did not make its own determination of the value of Defendant's interest in Lowenstein. 451 N.J. Super. 373.

Instead, this Appellate Division reversed that aspect of the Amended Judgment, i.e., part of the Amended Judgment which valued Defendant's partnership interest at $1,247,830. However, contrary to the argument, or at least the implication, by Defendant, that the value placed upon his partnership interest was erroneous, that was not why this Appellate Division remanded to a different trial judge to determine the value of Defendant's partnership interest. That is, this Appellate Division reversed that determination of partnership

value, not because it disagreed with the value placed on that partnership by the trial court, but because the trial court had failed to show that it had applied the appropriate criteria under New Jersey law; the trial court had "Failed to make specific factual findings to support the value of Defendant's goodwill." Slutsky v Slutsky, 451 N.J. Super. 336-338.

This Appellate Court also remanded to another trial judge to determine the percentage that Plaintiff should receive of whatever value was put on Defendant's partnership interest. As with the value placed by the trial judge on the partnership interest, this Court was not opining on whether 50% was the appropriate award to Plaintiff of the value of Defendant's partnership interest. Instead, this Appellate Division's issue was that the trial court "made no finding when fixing Plaintiff's interest in his law firm at 50%." Slutsky v Slutsky, 451 N.J. 358. This Court did not substitute its judgment or rule in any way, whether it agreed or disagreed with the aforementioned value of Defendant's partnership interest, or whether 50% of that value should be awarded to Plaintiff. Slutsky v Slutsky, 451 N.J. Super 373.

As with this Court's issue with the value of Defendant's partnership interest and the percentage award to Plaintiff thereof, this Court similarly remanded the issue of attorneys fees to the Remand Court. Slutsky v Slutsky, 451 N.J. Super. 373.

Similarly, this Court was not taking issue with an attorney's fee award which represented only about 35% of all of the legal fees which Plaintiff had incurred, or that the award of $457,793.38, represented approximately 50% of the legal fees being sought by Donahue Hagen. Instead, similar to the two other issues discussed above, this Court remanded because the trial court's decision "was based on insufficient, and now, vacated findings." Slutsky v Slutsky, 451 N.J. Super. 358; the trial court had not laid out its reasons for the amount of legal fees which Defendant was ordered to pay on behalf of Plaintiff.

It is the above three discussed issues that the Remand Court had Hearings and submissions, and ultimately issued the Remand Order resolving all three of the above issues. (CDa 1-2, 59-62) The Remand Court, in issuing its Decision and Order as to those three issues, satisfied the criteria set forth by this Appellate Division in Slutsky v. Slutsky, supra., (CDa 13-31, 41-58) and the applicable New Jersey law. Nevertheless, Defendant brought the herein appeal; Defendant was hoping that this Court would once again remand the three above-described issues, even though the Remand Court had correctly ruled as to all of those three issues; although the Remand Court had followed the instructions of this Appellate Division in Slutsky v. Slutsky, supra., Defendant was still dissatisfied. That is why we are back before this Court.

STATEMENT OF FACTS

Of course, Plaintiff agrees that the parties were married on January 15, 1978 (CDa 78). They had three children born of the marriage and, by dint of Plaintiff's having devoted herself to the parties' family for over thirty (30) years, between the date of the marriage and the date she filed for divorce (CDa 78-79).

Similarly, because of Plaintiff's excellence as a parent, spouse, and homemaker, Defendant's career thrived; Defendant's marriage and career coincided with his graduation from Harvard Law School and his employment as an associate at Lowenstein, the same law firm that he has been with since the beginning of his career (CDa 79).

Plaintiff acknowledges that she also had impressive scholastic credentials and licenses. However, again not even acknowledged by Defendant's Brief, Plaintiff gave up what was her "promising career" in order to build and support the wonderful family and lucrative career that Defendant continues to enjoy. (CDa 78).

Defendant well knows, as is indisputable, that despite Plaintiff's impressive credentials and licenses, because she has been essentially out of the work force most of the time since she married Defendant (CDa 78-79, 243, 245) , and because of Plaintiff's numerous health problems (CDa 78, 250, IT

265-10)[2] , as she approaches 70 years old, Plaintiff has no earning capacity to speak of. (CDa 36).

Quite to the contrary, Defendant continues to enjoy a successful career, which long ago "blossomed" into a lucrative partnership at Lowenstein. (CDa 79-80)

Before turning to the details of Defendant's career at Lowenstein, Plaintiff notes that Defendant, in his brief, as he did in the previous appeal, also tries to "gain mileage" by giving his version of the parties conduct during the aforementioned 19 day trial. Suffice it to say, the trial judge, in the original Amended Judgment, considered, to the extent relevant, the way the parties and their attorneys conducted themselves at that trial. ((CDa 85-86) Moreover, to the extent that their conduct at the trial was relevant, this Court similarly took it into account in Slutsky v. Slutsky, 451 N.J. Super. 345. Therefore, it ill - behooves Defendant and his attorneys, over 11 years after the trial of this case was concluded, to try to gain some advantage by re-hashing their version of what occurred at the trial.

Turning to what is drastically more relevant, it is Defendant's employment and partnership history at Lowenstein, which impacts upon this Appeal. (CDa 79, 143).

[2] 1T is the Transcript from August 6, 2019.

As noted earlier, and is readily laid out in Defendant's Brief, Defendant has worked at Lowenstein since his graduation from Harvard Law School in 1978. (CDa 79, 143) He was, at the time of divorce filing, and continues to this very day, an equity partner at Lowenstein, specializing

in complex tax and estate matters. (CDa 79, 143).

Defendant and his attorneys give their version of how his compensation is determined, without acknowledging, as noted before, how Plaintiff's support of their family and Defendant's career have significantly contributed to his success.(CDa 78-9).

Although Defendant's Brief fails to acknowledge it, Defendant is in an enviable financial condition, as the result of his career at Lowenstein, with Defendant's considerable earnings throughout the parties' marriage, which continued throughout the divorce proceeding and to this very day. (CDa 79-80).

DEFENDANT'S INTEREST IN LOWENSTEIN

Even before Plaintiff filed for divorce, Defendant's annual income often came close to or exceeded $1,000,000. [CDa 79-80, 278-286].

Both Defendant's expert and Plaintiff's expert came up with similar termination credit account ("TCA") values (CDa 163,188 3T 15, 1-10[3]).

[3] 3T is the transcript from September 6, 2024.

Although Plaintiff's expert, Mr. Hirschfeld, somewhat reduced the number he put on Defendant's partnership interest/goodwill, Mr. Hirschfeld still concluded, based upon all of the undisputed evidence, Defendant's partnership interest/ goodwill was worth more than $1,000,000. (CDa 188).

COUNSEL FEES AND EXPERT FEES

The Remand Court awarded Defendant to pay $487,041.15 of Plaintiff's attorney's fees. (CDa 1).

That attorney fee award was only about 35% of the entire legal fees owing (and to a large extent were unpaid despite charging liens), as of the time of the previous trial , of $1,509,838.25 (CDa41).

The Court limited its award to that amount even though, as with all of the other courts involved in this case, the Court found that Defendant's financial situation was drastically better than Plaintiff's situation, not only because Plaintiff had given up her career to be a homemaker and stay-at- home wife, Defendant's thriving career, and Plaintiff's established serious health and medical problems. CDa 38.

Moreover, the Court recognized that those legal fees which Plaintiff had paid and more importantly, still had to pay, would consume most or all of the equitable distribution which Plaintiff would receive, including the equitable

distribution that would come out of the proceedings which are the subject of this appeal. (2T 68,8-14)[4] .

LEGAL ARGUMENT

I. THE REMAND JUDGE CORRECTLY VALUED DEFENDANT'S INTEREST IN LOWENSTEIN.

A. THE REMAND JUDGE CORRECTLY VALUED DEFENDANT'S TCA.

From the outset, Defendant admits that, if nothing else, his equity interest in Lowenstein, for purposes of equitable distribution, is no less than his termination credit account ("TCA"). Defendant makes much of his claim that the Remand Judge resolved the difference between the TCA set by Defendant's expert and the TCA assigned by Plaintiff's expert by, according to Defendant, averaging the two numbers. What Defendant mentions only in passing is that there was little difference between the value of the TCA determined by Appellant's expert and the TCA value set by Respondent's expert. [CDa 163, 188].

Moreover, even though Defendant accuses the Remand Judge of having simply averaged the TCA numbers proposed by both sides, the extensive Decision and then Amended Decision by the Remand Judge shows that the Remand Judge did much more than average the two numbers. Instead, he did

[4] 2T is the transcript from May 4, 2023.

an analysis based upon the testimony of the competing experts and the competing legal arguments of able counsel on both sides.

The Remand Judge did so even though, as both parties and the Remand Judge, and the courts in the cases cited under Point I of Appellant's Brief recognize, analyses such as this TCA and the goodwill value of a law firm equity partnership is a difficult analysis to do. For certain, well-qualified experts, such as Hoberman for Defendant and Hirschfeld for Plaintiff, and well-respected appellate and trial judges, under the same set of facts, can come up with different values for a TCA (as in the case at bar), or the goodwill of a law firm partnership. What is clear from Defendant's 48-page Brief is that he will never be satisfied with any decision of an appellate or trial court, unless it completely aligns with his position.

In any event, as for the TCA, as the Remand Judge's resolution of the value of Defendant's TCA was based upon a thorough and reasonable analysis, and in any event, resulted in a number close to the numbers proposed by both Hoberman and Hirschfeld, the Remand Judge's determination of the TCA should not be disturbed.

B. THE REMAND JUDGE CORRECTLY VALUED DEFENDANT'S GOODWILL IN LOWENSTEIN AT $501,547.20.

At the outset, we again remind this Appellate Division that when this case was before you in Slutsky v. Slutsky, supra., the reason, as set forth in this Court's Decision and Order, that it was remanding the issue of the value of Defendant's equity interest in Lowenstein was that the trial judge had not made and set forth the necessary factual bases for his determination. That is, this Appellate Division did not agree or disagree with the value put on Appellant's equity interest in Lowenstein. Instead, this Appellate Division only faulted the trial judge for not setting forth the facts upon which he was relying, and the application of those facts to the relevant law.

Therefore, one of the major fallacies with Appellant's latest appeal is that this time, the Remand Judge followed the directions of this Court in Slutsky v. Slusky, supra., by finding and setting forth the relevant facts and applying the settled case law to those facts.

Turning to the cases cited in I.B. of Defendant's Brief, he first cited to Stern v. Stern, 66 N.J. 340 (1975). However, because the Stern case actually supports Plaintiff's position in this appeal, Defendant then proceeds to try to distinguish the Stern case.

Specifically, at the same time as Defendant cites to the Stern case, he acknowledges that in Stern, as did the Remand Court in the case at bar, the Court placed a significant value on the goodwill of a law partner's equity interest in the law firm.

In Defendant's desperate attempt to distinguish the Stern case, he argued at page 24 of Defendant's Brief that the divorcing equity partner in that law firm "was a dominant partner in his firm, had been one its founders, and was instrumental in establishing the firm and its reputation". However, none of those purported distinguishing factors, in any way, impact upon the value of Defendant's partnership interest in Lowenstein.

Specifically, Defendant never proffered evidence, "one way or another", as to whether or not he was a "dominant partner in his firm". What Defendant is asking this Court to do is to speculate that because Defendant says he is not a "dominant partner in his firm" that it is true. More importantly, neither the Stern case nor Defendant's Brief ever explains the relevance of whether or not Defendant is a "dominant partner in his firm".

Along the same lines, Plaintiff submits that it is irrelevant whether or not Defendant "had been one of its [Lowenstein's] founders". For the sake of argument, we will assume that, as Defendant argues, when he joined Lowenstein, it "already had a thriving practice". However, Defendant never

even attempted to tell us why it makes a difference whether he was a founding partner of Lowenstein, or, as he said, he joined it after it was already a successful law firm. What matters, as Defendant has to readily admit, is that Lowenstein is a well-established thriving law firm and Defendant has a valuable partnership interest in that firm.

Indeed, if Defendant had been a founding partner of Lowenstein, but Lowenstein was not a thriving law firm (which it is undisputed that it is), then Defendant would be arguing that it was irrelevant that he was a founding partner of a failing law firm.

At the same page 24 of Defendant's Brief, and as part of his desperate attempt to distinguish the Stern case (which settled precedent is contrary to Defendant's position in this Appeal), we are told that another distinguishing factor is that the partner-divorcing husband in the Stern case "was instrumental in establishing the firm and its reputation". There also, Defendant and his attorneys ask us to "take a leap of faith" when they tell us that Defendant, unlike the divorcing partner in the Stern case, was not "instrumental in establishing the firm and its reputation". Defendant presented no evidence to that effect to the trial court or the Remand Court.

Instead, while Defendant and his attorneys are forced to make numerous concessions, such as that Defendant is a recognized expert in tax and related

legal matters, "who was extremely skilled in a combination of very technical and difficult specialty areas" (page 24 of Defendant's Brief) that, nevertheless, Defendant wants this Court to accept his claim or argument that unlike in Stern, he was or is not "instrumental in establishing the firm and its reputation".

Therefore, even if Defendant could or had shown to the Remand Court that what he argues are distinguishing factors from Stern are present in the case at bar, none of those distinguishing factors, even if true (and they were not proven as true to the Remand Court), have any impact upon the significant value of Defendant's equity interest in Lowenstein. Again, Stern v. Stern, supra, the first case cited by Defendant, actually supports Plaintiff's position in this appeal.

Similarly, Defendant then cited to Dugan v. Dugan, 92 N.J. 423, 457 A.2d 1 (1983). There also, Defendant cited to a case that actually supports Plaintiff's position on this appeal; in the Dugan case, the Supreme Court of New Jersey did place a significant value on the goodwill of the divorcing attorney's interest in his law firm. That is, Defendant cited to Stern, and Dugan even though both of those cases found that the divorcing attorney had a valuable interest in his law firm (Stern was a substantial law firm like Lowenstein, while Dugan was sole practitioner). Yet, in citing to those cases,

Defendant is asking this Court to find that Defendant's goodwill in Lowenstein is worth nothing!

At page 29 of Appellant's Brief, he implicitly admitted that the Remand Judge, in setting a value on Defendant's equity interest in Lowenstein, had followed the direction of this Court in Slusky v. Slutsky, supra. "Faced with that reality", Defendant tells us at page 29 in his Brief as follows: "Ultimately, the remand judge provided three unconvincing explanations for finding goodwill, none of which are clear and convincing proof of the existence of some additional value outside of defendant's TCA". Even though the Remand Judge followed the instructions of this Appellate Division in Slutsky v. Slutsky, supra., Defendant argues that because he and his attorneys feel that the Remand Judge's reasons for the value he placed on Defendant's goodwill in Lowenstein are "three unconvincing explanations", this Appellate Division should follow what Defendant tells us to do, instead of the well-reasoned decision of the Remand Judge.

In trying to convince this Court that the goodwill value placed by the Remand Judge should not be followed, Defendant acknowledged several factors that make his equity partnership in Lowenstein, i.e., goodwill, more valuable. For example, at page 30, he acknowledged that he receives a longevity bonus. At page 31 he acknowledged, as did the Remand Judge, that

he has received additional compensation, as an equity partner, called "Special Allocations".

At pages 32 and 33 of Defendant's Brief, Defendant took issue with the Remand Judge finding that Defendant "does receive excess income as a result of being an equity partner". Defendant argues that is not so because he only receives "excess income" (as a result of being an equity partner) to the extent that "Lowenstein's Allocating Committee determines his worth...". That is, even though Defendant conceded that he receives "excess compensation" as an equity partner, because Appellate says that the amount of that compensation is set by a committee, that somehow that makes his equity partnership less valuable; Defendant argued that inexplicably that means that there is no goodwill in his equity partnership.

In making this argument, Defendant again cited to irrelevant distinguishing factors between the case at bar and the previous cases he cited in his Brief, i.e., Stern v. Stern, supra., and Dugan v. Dugan, supra.

At page 34 of his Brief, Defendant quoted Judge Lithotz in Slutsky v. Slusky, supra., as follows: "Therefore, the TCA account alone represented the true value of defendant's interest in the firm and there was no additional goodwill component": 451 N.J. Super. at 353-354. It would be an understatement to say that quote of Judge Litholtz from Appellant's Brief was

out of context; that quoted passage at page 34 of Appellant's Brief is just a partial summation by Judge Litholz of the opinion of Defendant's expert, Mr. Hoberman; neither Judge Litholz, nor this Appellate Division, was adopting the opinion of Defendant's expert. Indeed, it is because Judge Litholz did not adopt Defendant's position in Slutsky v. Slutsky, supra., that he remanded this case for, among other things, a determination of the value of Defendant's equity interest in Lowenstein. 451 N.J. Super. 373.

Defendant criticizes the methodology used by the Remand Judge in determining Defendant's "reasonable compensation" (Page 37 of Appellant's Brief). However, without doing any analysis of the Remand Judge's methodology, he simply accused the remand Judge of using a method "to reach a desired result".

At that same page 37 of Appellant's Brief, in a counter-intuitive argument, Defendant argued that the Remand Decision "essentially ignores that the defendant is a highly skilled attorney and an expert in both complex tax and estate planning, two separate areas of practice, a combination of skills that magnifies defendant's value to Lowenstein...". Defendant argues that the great value of Appellant's experience and skills, and Defendant's value to Lowenstein, somehow diminishes the goodwill component of Appellant's equity interest in Lowenstein.

At page 38 of his Brief, Defendant found fault with the Remand Judge for the Remand Judge's application, or lack thereof, of the applicable tax rate to the value of his goodwill. However, as with the tax rate to be applied to the TCA (and both side's opposing experts factored in income taxes), it is speculative as to what extent Defendant's goodwill in Lowenstein will be reduced by whatever tax rate is used.

In sum, the applicable cases, cited by Defendant in his Brief, are not distinguishable, certainly not by the distinguishing factors argued by Appellant. Moreover, not only did the Remand Judge apply the facts of this case to the settled case law, in putting a value on Appellant's equity interest in Lowenstein, but he scrupulously followed the criteria set forth by ths Court in Slutsky v. Slutsky, supra. Therefore, the value placed on Appellant's equity interest in Lowenstein should be affirmed.

II. THE REMAND JUDGE CORRECTLY AWARDED 50% OF DEFENDANT'S INTEREST IN LOWENSTEIN TO PLAINTIFF.

As with Defendant's argument to try to diminish the value of his equity interest in Lowenstein, Defendant and his attorneys ignore that this Court, in Slutsky v. Slutsky, supra., did not hold that Plaintiff was entitled to anything less than 50% of the value of Defendant's partnership interest in Lowenstein. Instead, just as with the analysis of the trial judge in placing a value on that partnership interest, this Appellate Court, in Slutsky v. Slutsky, supra., faulted

the trial judge for not making the necessary findings of fact and then applying those facts to the law, in determining what percentage Plaintiff should receive of Appellant's interest in Lowenstein. As for the statutory factors, as elaborated upon by the applicable cases, Defendant's arguments failed to recognize that the awarding of a 50% interest in the Lowenstein partnership value to Plaintiff was consistent with the applicable law.

At page 39 of Defendant's Brief, he cited to two of the seminal cases on equitable distribution, Painter v. Painter, 55N.J. 196 (1974), and Stout v. Stout, 155 N.J. Super. 196 (App.Div. 1977). Those cases, which ruled on several aspects of financial issues in a New Jersey divorce, repeated the stated purposes and principles and criteria of equitable distribution. The general principles espoused by those precedents do not, in any way, mandate giving Plaintiff any percentage less than 50% of the value of Defendant's partnership interest.

At page 39, Defendant cites to another seminal case, Rothman v. Rothman, 65 N.J. 219 (1974). That case was primarily concerned with the retroactive application of the New Jersey equitable distribution law, which certainly is not an issue in the case at bar. More importantly, cases that followed the Rothman case, such as Moore v. Moore, 114 N.J. 147 (1989), specifically recognized the essential supportive role played by the wife in the

home, acknowledging that as a homemaker, wife and mother, she should be well compensated with a substantial share of the family assets.

As for the statutory factors (N.J. Stat. 52A:34-23.1) in determining equitable distribution, those factors weigh heavily in favor of giving Plaintiff 50% of the value of Defendant's equity interest in Lowenstein. Those factors include, but are not limited to, the following:

1. The parties had a long marriage (30 years before the divorce filing date);

2. Plaintiff was a wife and homemaker throughout the marriage, enabling Defendant to thrive as an associate and then as an equity partner in Lowenstein;

3. Defendant also benefitted from Plaintiff raising three children who have excelled academically, professionally and personally;

4. Defendant is in far better financial circumstances than Plaintiff, in that Defendant continues to earn a substantial income from Lowenstein, while Plaintiff, who has been long out of the work force, must solely rely upon taxable alimony from Defendant to survive (CDa 89);

5. Plaintiff t has long had serious medical problems which not only further bar her re-entry into the job market, but will increase her medical and related costs, for the rest of her life (CDa 78 1T265-10);

6. The Court found, and Defendant readily acknowledges, Plaintiff incurred huge amount of attorneys fees, only part of which is being paid by Appellant, in order to receive in this divorce what she was and is entitled to. (CDa 321);

7. Plaintiff gave up promising career opportunities to be a loyal wife, mother and homemaker. (CDa 78)

At page 40 of his Brief, Defendant relies upon Steneken v. Steneken, 183 N.J. 290 (2005). The "double dipping" in Steneken referred to in Defendant's Brief had to do with double dipping from pensions, not from the value of the business. In any event, the business evaluated in the Stenken case was a closely-held corporation, in no way comparable to Defendant's equity interest in his preeminent law firm.

In sum, since there were and are no precedents and no statutes that support Defendant's position that Plaintiff should receive anything less than 50% of the value of his partnership interest in Lowenstein, Defendant cited to those three cases, i.e., Painter, Rothman, and Steneken, which in no way support Appellant's argument. Painter and Rothman just state the general principles of equitable distribution under New Jersey's equitable distribution law.

As for Steneken, because that case involved a closely held corporation, the value determination in that case is in no way similar or analogous to Defendant's valuable partnership interest in Lowenstein, all that Defendant could do with the Steneken case was to futilely try to distinguish it. However, the Steneken case has little in common with the case at bar and we need not be concerned with the holding in Steneken. As with all of the cases and the applicable statute, i.e., N.J. Stat. 2A: 34-23, neither the statute nor the cases cited under Point II of Defendant's Brief in any way support Defendant's hopeless argument that for some reason Plaintiff should receive less than 50% of the value of his equity partnership interest in Lowenstein.

Defendant's desperate argument is necessitated by it being indisputable that the Remand Judge scrupulously followed this Court's directions in Slutsky v. Slutsky, supra; by setting forth the facts and the applicable law; the Remand Judge's holding that Plaintiff is entitled to 50% of the value of Defendant's partnership interest in Lowenstein should be affirmed.

III. THE REMAND JUDGE CORRECTLY RULED THAT DEFENDANT MUST PAY $487, 041.15 IN COUNSEL FEES ON BEHALF OF PLAINTIFF TO COVER SOME OF HER ATTORNEY'S FEES

As noted earlier in this Brief, Defendant actually "got off easy"; Defendant could have well been assessed significantly more of Plaintiff's legal fees, based upon the statutory factors and the settled case law.

Further undermining Defendant's desperate attempt to reduce his payment of a share of Plaintiff's legal fees, as with the determination of the value of Defendant's partnership interest and the percentage thereof to be awarded to Plaintiff, one of the fallacies in Defendant's arguments is that in Slutsky v. Slutsky, supra., this Appellate Division set forth what the Remand Judge had to do in determining Defendant's share of Plaintiff's legal fees. The Remand Judge followed the directions of this Court in the previous Slutsky case. Nevertheless, Defendant has opted again to put everyone through the time, trouble and expense of responding to an appeal, because even though the Remand Judge did what this Court told him to do, Defendant is still dissatisfied.

As for the applicable law which supports Plaintifft's position, as to the attorney's fee award, on this appeal, we again need to look no further than the cases cited by Defendant himself.

The first case cited under Point III of Defendant's Brief, Szczepanski v. Newcomb Medical Center, Inc., 141 N.J. 346 (1995), as the name of that case indicates, is not a matrimonial case. Apparently, it is cited by Defendant for the proposition, again, in a corporate rather than a matrimonial setting, that reasonable attorney's fees must be just that, reasonable. It is surprising that Defendant made the reasonableness argument, since he and his attorneys know

very well the huge amount of legal work that Plaintiff had to have done because Defendant opposed Plaintiff, "at every turn", literally from the beginning of this divorce litigation (CDa 53). For that reason, Defendant does not even dispute that it was reasonable for Plaintiff to incur approximately $1.5 million in legal fees in order to protect and enforce her legal rights in this case.

Included in that approximately $1.5 million legal fees were the legal fees incurred by Plaintiff with her trial attorneys, Donahue Hagen, one of the most respected matrimonial law firms in northern New Jersey. Among other things, Donahue Hagen had to represent Plaintiff through a 19-day trial which, of course, included extensive preparation, and extensive pre-trial financial discovery. Not surprisingly then, Defendant does not dispute that the legal fees charged by Donahue Hagen were reasonable.

Defendant then cites to Mayer v. Mayer, 180 N.J. Super. 164, 434 A.2d 614 (App. Div. 1981). At least that case was a divorce case and is an often-cited case, but not for the proposition argued in Defendant's Brief.

Specifically, the Mayer case is an often-cited case because it established that under certain circumstances (Circumstances not even alleged by Defendant herein), a party who is paying legal fees for the opposing party (as

Defendant must do here) is sometimes entitled to a plenary hearing as to those legal fees.

Since Defendant is not even arguing that there should have been a plenary hearing, apparently he cited to the Mayer case for the same proposition as the Newcomb Medical Center case, which is that the legal fees must be reasonable. However, as Plaintiff showed with her discussion as to the Newcomb Medical Center case, Defendant does not seriously dispute that the total legal fees incurred by Plaintiff, under all the circumstances, were reasonable. Again, the legal fees were so high because Defendant and his attorneys, literally since this case was filed in 2008, have fought Plaintiff and her attorneys on virtually every issue. (CDa 53).

In sum, Defendant cites to these cases for the requirement that the legal fees he has to pay for Plaintiff should be reasonable. Yet, Defendant does not seriously dispute that Plaintiff's total legal fees incurred were reasonable, under the circumstances, especially since much of those legal fees were incurred because Defendant was so adamantly opposed to giving and paying to Plaintiff what she was legally entitled to. (CDa 53)

Defendant then relied on Argila v. Argila, 256 N.J. Super. 484, 607 A.2d 675 (App. Div., 1992). As with the other precedents which Defendant chose to rely upon in his Brief, it is surprising that he cited to the Argila case, since the

wife in that case, despite having received a substantial equitable distribution award, still received an award equaling 65% of the attorney's fees that she incurred. That is, Defendant in our case was ordered to pay only 35% of Plaintiff's total legal fees or approximately 50% of what Donahue Hagen charged Plaintiff for the extensive legal services provided by Donahue Hagen, which included the 19-day trial.

Nevertheless, apparently Defendant and his attorneys relied upon the Argila case for the proposition (presumably) that the Argila Court did reduce the amount of legal fees awarded, based upon the Court's determination that the original total of those fees was not reasonable. However, because of the extensive and complex issues that Donahue Hagen and the other attorneys representing Plaintiff had to litigate, Defendant does not seriously dispute that the total legal fees of Plaintiff (including the legal fees charged by Donahue Hagen) were reasonable. For that reason, the only part of the Argila holding which this Court could apply in the case at bar is that as Plaintiff has argued throughout, the Remand Court should have ordered Defendant to pay more, not less, of Plaintiff's attorneys fees. Therefore, based upon the Argila case cited by Defendant, this Court should readily affirm the Remand Court's award of $487,041.15, which, again, was only about 35% of Plaintiff's total legal fees, or 50% of what she owed to Donahue Hagen.

All the other factors which the Court should take into account further mandate that the share of Plaintiff's legal fees which Defendant was ordered to pay was less, not more, that he should have been ordered to pay. That is so for numerous reasons including, but not limited to, the following;

1. Plaintiff was represented by Donahue Hagen, who had to work hard and had the ability to maneuver the numerous objections and numerous attacks and counter-attacks of Defendant and his attorneys;

2. Plaintiff, who has devoted herself to Defendant and their three children during the entire course of the marriage, has no earning capacity whatsoever, having been out of the work force for so long;

3. Fortunately for Defendant, he is in much better health than Plaintiff (CDa 88);

4. Besides Defendant receiving 50% of all of the marital assets, plus having been awarded certain disputed assets which he convinced the Court were his pre-marital property, he continues to earn substantial income as an equity partner in the prestigious and prosperous Lowenstein law firm.

5. Unlike Defendant, Plaintiff has incurred and will continue to incur substantial un-reimbursed medical expenses.

6. Plaintiff has incurred , and must continue to incur, considerable legal fees because, contrary to what Defendant said at the beginning in his Brief, Defendant apparently does not want to see the end of these litigations.

7. Plaintiff has major health and medical problems.

In sum, the Remand Court, in following the instructions of this Court in Slutsky v. Slutsky, supra., and the applicable case law, awarded Plaintiff only 35% of her entire attorney's fees or 50% of the fees that she owed to Donahue Hangen. Although the facts and applicable law of this case would have mandated a larger attorney's fee award to Plaintiff than the Remand Court awarded, it is, ironically, Defendant, and not Plaintiff, who is appealing the attorney's fee award of the Remand Court. Since there is no valid basis for further reducing Plaintiff's attorney's fee award, this Court should readily affirm that part of the Remand Order.

CONCLUSION

Based upon the foregoing, and the facts and the law as conceded in Appellant's Brief, it is respectfully submitted that Appellant's appeal should be denied in its entirety, and the Remand Court's Decision and Order should be affirmed.

Dated: July 29, 2025.

Respectfully submitted,

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NANCY G. SLUTSKY, Plaintiff/Respondent, v. KENNETH J. SLUTSKY, Defendant/Appellant.	:	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-000922-24T4 Civil Action On Appeal From: SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION, FAMILY PART MORRIS COUNTY FM-14-1535-08 Sat Below: HON. JAMES M. DEMARZO, P.J.F.P.

REPLY BRIEF OF DEFENDANT/APPELLANT IN SUPPORT OF APPEAL

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PRELIMINARY STATEMENT

Defendant relies upon and incorporates herein the Preliminary Statement set forth in his initial brief (Db1-3).

Defendant responds to plaintiff's Preliminary Statement as follows. (Pb1-2).

As a respondent, plaintiff predictably applauds the remand judge for "getting it right" and suggests that defendant "got off easy". However, throughout her brief, plaintiff fails to provide any analysis of how the remand judge got "it right" or how defendant "got off easy". Instead, plaintiff simply ignores the comprehensive analysis that defendant set forth in his initial brief, including his specific examples of how the remand judge, similar to the trial judge and contrary to this Court's published opinion, made critical errors of law, abused his discretion, and ignored or misconstrued the credible evidence.

Plaintiff refers to defendant as a "disgruntled litigant" and supports her reference by intentionally misquoting defendant's initial brief. Specifically, plaintiff quotes only that "[d]efendant simply seeks to have this matter concluded once and for all", but intentionally fails to quote the remainder of the sentence: "in a manner that is consistent with applicable precedent and fundamental fairness." This omission points directly to the reason why defendant is appealing, which, as comprehensively explained in his initial brief, is that the Remand Decision did not

meet either of these standards. Moreover, if a result consistent with applicable precedent and fundamental fairness can be obtained with this Court exercising original jurisdiction, as opposed to another remand, defendant wholeheartedly consents.

STATEMENT OF RELEVANT PROCEDURAL HISTORY

Defendant relies upon and incorporates herein the Statement of Relevant Procedural History set forth in his initial brief (Db3-5).

Defendant responds to plaintiff's Statement of Relevant Procedural History as follows (Pb3-6).

Plaintiff admits that defendant appealed the "award of $457,793.38 for Donahue Hagen" and that she did not cross-appeal the denial of awards to her for any of her other attorneys. (Pb4). Accordingly, if defendant appealed the "award of $457,793.38 for Donahue Hagan", and if plaintiff did not cross-appeal the denial of awards to her for any of her other attorneys, then the only issue on remand was the award of counsel fees to her for Donahue Hagan, and not the award of counsel fees to her for any of her other attorneys. However, the remand judge awarded $487,041.15 to plaintiff, "representing thirty-five (35%) of the $1,509,838.25 in counsel fees that [p]laintiff incurred, … ," and not just those counsel fees that plaintiff incurred with respect to Donahue Hagan. (CDa58).

Plaintiff correctly states that this Court "did not make its own determination" related to any of the issues remanded, but rather remanded the specific issues to the trial court for the remand judge

to make determinations. (Pb4). However, plaintiff fails to acknowledge that if the specific issues were remanded to the trial court for the remand judge to make determinations, the determinations as to those specific issues were to be made anew without consideration of the trial judge's initial determinations that were vacated.

Most notably, plaintiff incorrectly states that the Remand Decision "satisfied the criteria set forth by this Appellate Division in Slutsky v. Slutsky … and the applicable New Jersey law." (Pb6). For the reasons stated in defendant's initial brief, it is respectfully submitted that the Remand Decision is inconstant with this Court's published opinion and New Jersey law.

STATEMENT OF FACTS

Defendant relies upon and incorporates herein the Statement of Facts set forth in his initial brief. (Db3-20).

Defendant responds to the Statement of Facts set forth in plaintiff's brief as follows. (Pb7-11).

Plaintiff criticizes defendant for including the trial judge's credibility and conduct findings in his initial brief and suggests that they are not relevant. (Pb8). On the contrary, credibility and conduct findings are absolutely relevant to the factors considered in awarding equitable distribution and counsel fees.

Plaintiff correctly states that Mr. Hoberman and Mr. Hirschfeld "came up with similar termination credit account ("TCA")

values". (Pb9). However, as set forth in defendant's initial brief, plaintiff fails to acknowledge that Mr. Hoberman and Mr. Hirschfeld used vastly different methodologies, with Mr. Hoberman simply using the actual balance in defendant's TCA and Mr. Hirschfeld performing a convoluted calculation. (Db11-13). Plaintiff also fails to acknowledge, as set forth in defendant's initial brief, that the remand judge simply averaged Mr. Hoberman's value and Mr. Hirschfeld's value, and that the remand judge failed to remove the longevity bonus from Mr. Hirschfeld's value despite determining that it should be removed. (Db16-17).

Plaintiff attempts to downplay the significance of the award to her of $487,041.15 in counsel fees by stating that the award "was only about 35% of the entire legal fees owing … ." (Pb10). Plaintiff fails to acknowledge, as set forth in defendant's initial brief, that the only award to her that was remanded was the award to her for Donahue Hagan, not the denial of the awards to her for any of her other attorneys. (Pb18-20).

LEGAL ARGUMENT

I. THE REMAND JUDGE ERRED BY INCORRECTLY VALUING DEFENDANT'S INTEREST IN LOWENSTEIN. (CDa1-58; CDa59-62; 3T)

A. THE REMAND JUDGE ERRED IN VALUING DEFENDANT'S TCA AT $288,954. (CDa1-58; CDa59-62; 3T)

Defendant relies upon and incorporates herein the Legal Argument set forth in his initial brief. (Db20-22).

Defendant responds to the Legal Argument set forth in plaintiff's brief as follows. (Pb11-12).

Plaintiff commences her legal argument by incorrectly summarizing defendant's position with respect to his interest in Lowenstein, stating: "Defendant admits that, if nothing else, his equity interest in Lowenstein, for purposes of equitable distribution, is no less than his termination credit account ("TCA")." (Pb11). On the contrary, defendant's position, and Mr. Hoberman's position, is that defendant's equity interest in Lowenstein, for purposes of equitable distribution, is his TCA. (Db20-22). Nothing more, and nothing less.

Plaintiff then states that the remand judge "did much more than average the two numbers." (Pb11). This statement is blatantly false. As set forth in defendant's initial brief, the remand judge simply averaged Mr. Hoberman's value of defendant's TCA and Mr. Hirschfeld's revised calculation because they were, coincidentally, within a few thousand dollars of each other. (Db20). There was no further analysis as plaintiff suggests. (Pb11-12).

More importantly, plaintiff completely fails to address defendant's two points with respect to his TCA. (Pb11-12). First, defendant demonstrated that Mr. Hoberman and Mr. Hirschfeld used vastly different methodologies, with Mr. Hoberman using the actual balance in defendant's TCA and Mr. Hirschfeld using a convoluted method. (Db20-21). Second, defendant demonstrated that the remand

judge specifically noted that Mr. Hirchfeld's revised calculation included defendant's longevity bonus when it should not have been included, but the remand judge failed to remove it from Mr. Hirschfeld's revised calculation before averaging it with Mr. Hoberman's value. (Db21-22). If the longevity bonus had been removed from Mr. Hirschfeld's revised calculation, his revised calculation would have been reduced from $292,904 to $215,280 (i.e., approximately $60,000 less than Mr. Hoberman's value for defendant's entire interest in Lowenstein). (Db21-22).

Based upon the foregoing, and for the reasons stated in defendant's initial brief, it is respectfully submitted that the remand judge erred in valuing defendant's TCA. It is submitted that if Mr. Hoberman's value is not going to be used for defendant's entire interest in Lowenstein, but rather, as maintained by Mr. Hirschfeld and adopted by the remand judge, that defendant's TCA and goodwill are going to be separate components, then the value of defendant's TCA should be $215,280 (i.e., Mr. Hirschfeld's value after removing the longevity bonus).

B. THE REMAND JUDGE ERRED IN FINDING AND VALUING DEFENDANT'S GOODWILL AT $501,547.20. (CDa1-58; CDa59-62; 3T)

Defendant relies upon and incorporates herein the Legal Agreement set forth in his initial brief. (Db23-39).

Defendant responds to the Legal Argument set forth in plaintiff's brief as follows. (Pb13-20).

Plaintiff incorrectly suggests that the decision in Stern v. Stern, 66 N.J. 340 (1975), supports her position. (Pb13). As explained in defendant's initial brief, while the Court did determine under the particular facts that Mr. Stern had goodwill that was subject to equitable distribution, it was only because the firm's partnership agreement in Stern provided for the payment of an additional amount (which at least in Mr. Stern's case, was very significant) above and beyond the book value of the firm, and which the firm was willing to bind itself to pay. (Db23-24). In defendant's case, the Lowenstein agreement provides for no such additional payment for a departing member's interest in the firm. (Db24). Thus, under a plain reading of Stern, the presumptive value of any additional goodwill for defendant's interest in Lowenstein would be zero.

Plaintiff also incorrectly suggests that the decision in Dugan v. Dugan, 92 N.J. 423 (1983), supports her position. As explained in defendant's initial brief, while the Court did determine under the particular facts that Mr. Dugan had goodwill that was subject to equitable distribution, it was because he was a solo practitioner with excess compensation that he possessed. (Db24-26). In contrast to Stern, Dugan is therefore not determinative in this matter.

Plaintiff incorrectly states that defendant "acknowledged several factors that make his equity partnership in Lowenstein,

i.e., goodwill, more valuable." (Pb17). As explained in defendant's brief, these several factors, which were used by the remand judge to create goodwill despite the absence of any proof, let alone clear and convincing proof, do not create goodwill. (Db28-33). Taking these failures one by one, defendant explained that the longevity bonus is not separate and apart from the TCA. (Db30). Next, defendant explained that senior membership does not provide any additional value outside of the TCA. (Db30-31). Finally, defendant explained that his receipt of certain special allocations (in only two of the 24 years that he had been an equity partner, with those two being related to the arrival of one particular lateral partner) was not additional compensation, but rather a return on a forced investment of foregone distributions that he was required to make as a partner. (Db31-32). Finally, defendant explained that he does not receive excess income, but rather that he is paid according to what Lowenstein's Allocation Committee determines he is worth. (Db32-33).

Plaintiff also fails to address the fact that the remand judge went beyond the terms of defendant's shareholders agreement and conducted his own reasonable compensation analysis. (Db34-38).

Finally, plaintiff makes an incoherent argument with respect to the remand judge's failure to deduct income taxes from the goodwill value. (Pb20). There can be no dispute that plaintiff's expert, Mr. Hirshfeld, determined: (i) defendant's goodwill would

be subject to a 40% tax rate as he earned it over time; and (ii) most importantly, that his revised calculation should be reduced to deduct these taxes accordingly, something the remand judge inexplicably neglected to do, to arrive at his end result. (Db38-39). Using this same 40% tax rate (although at trial defendant demonstrated why this rate was too low), and reducing the goodwill by this substantial tax burden imposed on every dollar of such "goodwill" received by defendant, just as plaintiff's expert himself did, the goodwill calculated by the remand judge would be reduced from $501,547.20 to $300,928.32. (Db39).

Based upon the foregoing, and for the reasons stated in defendant's initial brief, it is respectfully submitted that the remand judge erred in finding and valuing defendant's goodwill, and that the value should be vacated.

II. THE REMAND JUDGE ERRED BY AWARDING 50 PERCENT OF THE ERRONEOUS VALUES OF DEFENDANT'S INTEREST IN LOWENSTEIN TO PLAINTIFF. (CDa1-58; CDa59-62; 3T)

Defendant relies upon and incorporates herein the Legal Argument set forth in his initial brief. (Db39-43).

Defendant responds to the Legal Argument set forth in plaintiff's brief as follows. (Pb20-24).

Plaintiff unaccountably errs in explaining the holding in Steneken v. Steneken, 183 N.J. 290 (2005). The "double dipping" in Steneken had nothing to do with pensions, as plaintiff asserts, and everything to do with whether a business owner could be obligated

to pay alimony from his income stream, and also be obligated to pay equitable distribution of the value of the business that was calculated using the same income stream. (Db40-41). However, in Steneken, it was recognized that it would be inequitable to award the wife alimony and 50% of the value, and instead the wife was awarded alimony and only 35% of the value. (Db40-41).

Defendant is a partner in a large law firm who is ethically prohibited from selling his interest or otherwise deriving value from his interest (except by his work efforts during the remainder of his career). As a result, unlike any other business owner, including Mr. Steneken, who is able to sell his or her business and realize the value separate and apart from his work effort, the only value that will ever be realized by defendant is his ongoing income stream, which he can only realize by continuing to work in order to earn the value that has been factored into his goodwill under the assumption that it will be earned in later years. Recognizing this important distinction demonstrates exactly why it is inequitable to award plaintiff a full 50% of the very speculative value of defendant's interest.

Further, Mr. Steneken had the ability to sell his business and realize the value ascribed to it, while also continuing to earn income by working after the sale. In other words, although Mr. Steneken was required to pay 35% of the value to his wife up front,

he could at least sell the business at any time, thereby turning the value of his business into cash.

Defendant is in a considerably more tenuous position than Mr. Steneken, a reality that must be factored into the share of the goodwill assigned to plaintiff. Unlike Mr. Steneken, defendant is not able to sell his interest in Lowenstein and, as a result, notwithstanding the requirement that he pay plaintiff a percentage of the value of his interest up front, he can only realize the value ascribed to his interest as he continues to work and get paid through his TCA.

Plaintiff fails to address the inequity cited by defendant with respect to an award of 50% of the value of his interest in Lowenstein to her, instead just referring to it as a "desperate argument". (Pb24). On the contrary, the argument is not "desperate", but rather it is obvious and necessary in order to achieve an equitable result. By awarding plaintiff a percentage of the value of defendant's interest, she receives all of the benefit and none of the risk of realizing such value over the course of defendant's remaining working years. (Db41). Adding to the inequity, plaintiff receives this without herself being required to make the slightest additional "intangible contribution" to defendant's remaining working years. Instead, defendant is forced to assume the risk by paying plaintiff a percentage of the value of his interest up front based on the assumption that the full value

will be realized over time. (Db41). Since equitable distribution is not modifiable, if anything ever happened that prevented defendant from actually realizing the value ascribed to his interest, such as a serious and unforeseeable medical problem, the loss would be all on him. (Db41). This factor should compel an equitable distribution award materially below 50%. (Db41). While the 35% assigned in Steneken should stand as a cap in this matter, when dealing with the risks inherent in an attorney ever realizing any goodwill found to exist in his practice solely through his work efforts over the duration of his legal career, any such percentage should be even lower than 35%.

Finally, plaintiff fails to address the distinction between income stream assets, such as defendant's interest in Lowenstein, and non-income stream assets, such as the net sale proceeds of the former marital home or defendant's retirement accounts (which defendant has never contested). (Db42-43). The former requires defendant to keep working and to assume all of the risk, whereas the latter does not require defendant to keep working or to assume all of the risk. (Db42-43).

Based upon the foregoing, and for the reasons stated in defendant's initial brief, it is respectfully submitted that the remand judge erred in awarding plaintiff 50% of the value of defendant's interest in Lowenstein, and that the award should be vacated or modified.

III. THE REMAND JUDGE ERRED BY COMPELLING DEFENDANT TO PAY $487,041.15 IN COUNSEL FEES ON BEHALF OF PLAINTIFF FOR ALL OF HER ATTORNEYS. (CDa1-58; CDa59-62; 3T)

Defendant relies upon and incorporates herein the Legal Argument set forth in his initial brief. (Db43-48).

Defendant responds to the Legal Argument in plaintiff's brief as follows. (Pb24-30).

Plaintiff repeats that defendant "got off easy" and that he "could have well been assessed significantly more of Plaintiff's legal fees, … ." (Pb24). This is speculative and ignores the facts.

Plaintiff ignores that the remand judge exceeded the scope of the remand, failed to address the relevant factors, and even when he attempted to do so superficially, he applied them in an irrational way having no basis in law, fact or equity. (Db43).

Plaintiff ignores that, under the trial court's decision, defendant was obligated to pay $467,793.38 in counsel fees to her for Donahue Hagan, and that he was not obligated to pay her for any of her other fees. (Db44-45). Plaintiff ignores that defendant appealed only the counsel fees that he was obligated to pay to her for Donahue Hagan, and that she did not cross-appeal the denial of her requests that defendant pay counsel fees to her for the other attorneys. (Db45). As a result, the only counsel fees subject to the remand were those defendant was obligated to pay to plaintiff for Donahue Hagan. (Db45). However, the remand judge ordered defendant pay 35% of the $1,509,838.25 in total counsel fees that

plaintiff incurred with respect to all of her attorneys, including: (A) $929,544.58 for Donahue Hagan; (B) $445,808.00 for Budd Larner; (C) $39,971.43 for Mr. Spinato; (D) $7,500 for Mr. Cheifetz; and (E) $87,014.24 for Mr. Knee. (Db45-46).

Plaintiff ignores that even if an award was going to be made to plaintiff for Mr. Knee, the trial judge had already limited Mr. Knee's fees to $34,383.79, not the $87,014.24 used by the remand judge. (Db46).

Plaintiff also ignores that the remand judge, in directing defendant to pay 35% of the $1,509,838.25 in total counsel fees that plaintiff incurred with all of her attorneys, failed to afford defendant an opportunity to challenge the reasonableness of the fees of the other attorneys. (Db46-47).

Finally, plaintiff ignores that if Budd Larner's fees were even going to be considered in the award, then defendant should have been afforded an opportunity to address the reasonableness, or lack thereof, of their fees, including, but not limited to: (A) the inclusion in their fee request of the amount attributable to their attempt, in blatant violation of an order, to record mortgages against the former marital home to secure loans from plaintiff's family members made solely to enable plaintiff to pay their fees; (B) their inclusion of more than $23,000 in disbursements for "in-office copying"; (C) their inclusion of more than $8,000 in automatic surcharges for "file maintenance"; and (D) their

inclusion of more than $37,000 in interest charges at the excessive rate of 12% compounded monthly. (Db47-48). As to the latter, in footnote 31 of the Remand Decision, the remand judge held:

> However, the Court shall not consider any accrued interest when addressing this issue because [d]efendant should not be held responsible for [p]laintiff''s nonpayment of fees, nor her inability to negotiate affordable payment plans with her various attorneys or to otherwise mitigate the accrual of interest charges.

(CDa41). However, the remand judge did not review Budd Larner's fees to exclude any interest charged. (Db47-48).

Based upon the foregoing, and for the reasons stated in defendant's initial brief, it is respectfully submitted that the remand judge erred in compelling defendant to pay $487,041.15 in counsel fees to plaintiff for all of her attorneys, and that the award should be vacated or modified to exclude consideration of the fees for all attorneys other than Donahue Hagan.

CONCLUSION

Based upon the foregoing, and for the reasons stated in defendant's initial brief, it is respectfully submitted that defendant's appeal should be granted in its entirety.

Respectfully submitted,

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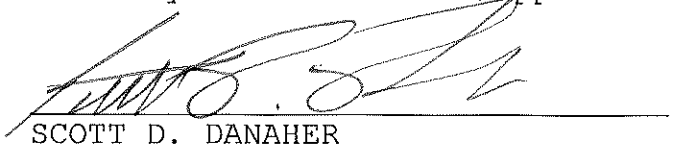

SCOTT D. DANAHER

DATED: August 13, 2025