

HearSay

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March Hearsay Contributors



Laura Markee

Markee Valuations

Laura Markee, CFA, ASA, is a business appraiser and financial damages expert, as well as founder of Markee Valuations based in Clark County, Washington.



Chelsey Butchard

Butchard Law

Chelsey Butchard's practice is focused on family law. Chelsey is the current family law section president at the CCBA.



Jean Mccoy

Landerholm, P.S

Jean McCoy's practice focus is real estate transactions and conflict resolution, landlord/tenant and creditors' rights.



Amanda Hartman

Beaty Hatch

Amanda joined the Beaty Hatch team in February 2025 as a family law attorney. She focuses her practice on dissolutions, modifications and prenuptial agreements.



Hon. John Fairgrieve

Clark County Superior Court

Judge John Fairgrieve was appointed to the Superior Court bench by Governor Jay Inslee in April 2015.

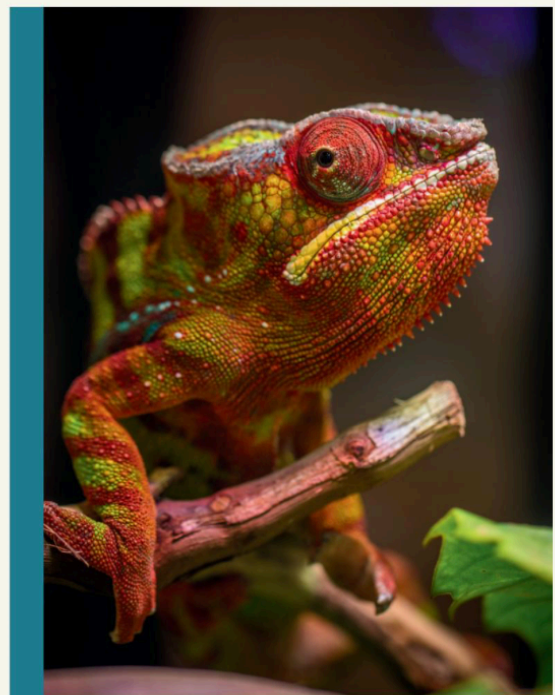
The Chameleon of Business Valuation: *Personal Goodwill in Oregon Divorce Cases*

Written by Laura Markee, ASA, CFA with significant contributions from Anna Pilcher

Personal goodwill remains one of the most unpredictable and heavily contested issues in Oregon divorce valuations. Despite decades of case law, outcomes remain inconsistent, fact-specific, and at times untethered from valuation principles. For family law practitioners, goodwill often feels less like settled law and more like the Wild West.

That uncertainty traces back to a foundational concept articulated by the Oregon Court of Appeals: goodwill has a “chameleon capability.” Its character changes depending on context. Nowhere is this more apparent than in disputes over personal goodwill, where the same business can produce very different valuation outcomes depending on assumptions, expert framing, and judicial interpretation.

The instability matters not only within Oregon but across state lines. Professional practices, closely held businesses, and marriages frequently cross jurisdictional borders, making Oregon’s goodwill framework directly relevant to Washington practitioners and others advising clients with multi-state connections.



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Slater as the Analytical Starting Point

Slater¹ remains the starting point for analyzing goodwill in Oregon divorce cases. The case involved a chiropractic practice in which the appraiser assumed the husband would sign a non-competition agreement as part of a hypothetical sale.

The Court of Appeals rejected that assumption. A valuation may not rely on a non-compete the owner has not agreed to and cannot be compelled to sign. If goodwill can be transferred only through the owner's future consent, participation, or restraint, it is personal goodwill and must be excluded from the marital estate.

The rule itself is straightforward. Most disputes arise not because Slater is unclear, but because its transferability requirement is diluted or replaced with assumptions that are not supported by the facts or the governing legal standard.

What Is Goodwill - and Why Is It So Hard to Classify?

Goodwill reflects a business's ability to generate earnings beyond a normal return on assets. While goodwill can often be quantified using standard valuation techniques, classification is far more difficult.

Oregon courts typically frame goodwill as either enterprise or personal. Valuation professionals, however, often distinguish among three categories that are critical to applying Slater correctly:

1. **Enterprise Goodwill.** Goodwill that belongs to the business and is transferable without the owner's continued involvement. It arises from systems, workforce-in-place, contracts, location, branding, and business-held licenses or accreditations, and is included in the marital estate.
2. **Pure Personal Goodwill.** Goodwill is inseparable from the individual and not transferable under any circumstances, including personal reputation, non-delegable skills, and unique relationships. Pure personal goodwill is excluded from the marital estate.
3. **Transferable Personal Goodwill (the Gray Area).** Goodwill that originates with the owner but might be transferred through non-competes, transition agreements, or client introductions. Under Slater, courts may not assume those mechanisms exist. If transfer requires the owner's future agreement to restrictions or services, the goodwill remains personal unless the business already controls those relationships or restrictions independent of the owner.

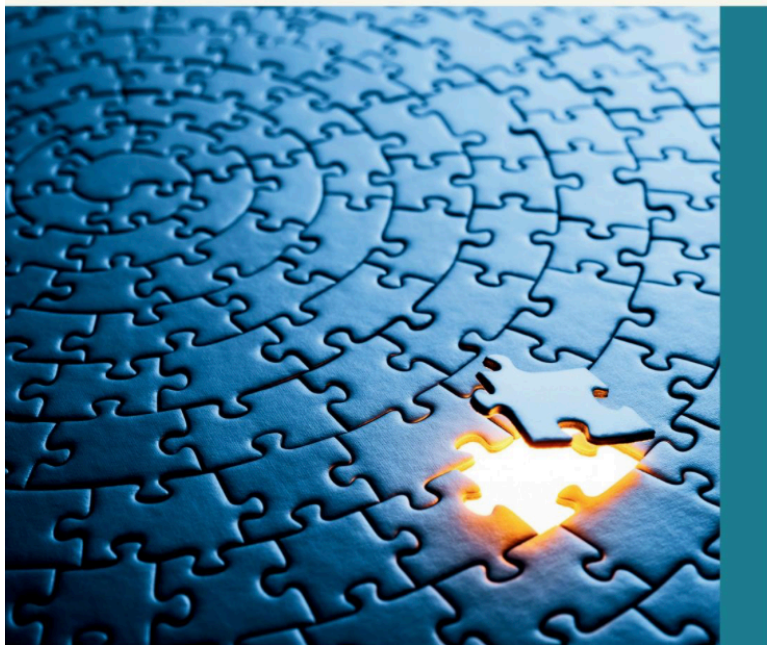
The third category is where most valuations go off the rails.

¹ In re the Marriage of Slater, 240 Or. App. 30, 245 P.3d 676 (2010)

Why Oregon Goodwill Cases Feel Like the Wild West

Recent Oregon cases illustrate recurring analytical pitfalls. The following examples are offered to highlight patterns rather than critique specific outcomes.

Misunderstanding the Business Model. In a recent low-bid contractor case, an appraiser allocated a majority of goodwill to personal goodwill even though the company operated in a price-driven environment where contracts were awarded based on cost rather than relationships. In such industries, systems, scale, and cost structure, not individual reputation, drive earnings. The court ultimately selected a personal goodwill percentage of 35% without clear linkage to how value was actually created.



Personal goodwill cannot be presumed; it must be proven through competent expert analysis.

Substituting Intuition for Analysis.

In an Oregon dental practice case, the court attempted to distinguish prior appellate guidance by comparing chiropractors and dentists. Because chiropractors physically manipulate patients themselves while dentists often delegate routine care to hygienists, the court concluded the goodwill analysis should differ. From that premise, the court reached conclusions without fully addressing the core question under Slater: whether earnings were transferable independent of the individual owner. Occupational generalizations replaced an analysis of transferability.

Presumed, Not Proven. In a recent Oregon divorce involving a CPA firm, opposing counsel objected to appointing a valuation expert altogether, asserting the firm consisted entirely of the husband's personal goodwill. The objection skipped a critical step. Personal goodwill cannot be presumed; it must be proven through competent expert analysis evaluating whether the firm's earnings are transferable independent of the owner.

Conclusion: Taming the Chameleon

Until Oregon courts apply more consistent analytical boundaries, personal goodwill will continue to function as Slater's chameleon, changing character depending on context, assumptions, and presentation.

Recognizing the distinction among enterprise goodwill, pure personal goodwill, and transferable personal goodwill, and applying Slater's transferability requirement as written, is essential to producing defensible valuations and more predictable outcomes in Oregon divorce cases.

Practice Takeaway

In Oregon divorce cases, personal goodwill cannot be presumed and may not be based on hypothetical non-competes or transition agreements. The central inquiry under Slater is whether the business's earnings are transferable independent of the owner, which requires attention to industry structure, contractual controls, and how value is actually generated, not professional stereotypes or intuition.



For questions regarding personal goodwill analysis in marital divorce matters, or for consultation on complex valuation issues, the author welcomes inquiries from practitioners.

Laura Markee - Markee Valuations

(360) 601-0713

laura@markeevaluations.us