Neutral Citation Number: [2015] EWHC 834 (Fam)

Case No. FD13D02383

IN THE HIGH COURT OF JUSTICE

FAMILY DIVISION

Royal Courts of Justice

Date: Friday, 6th March 2015

Before:

MR JUSTICE HOLMAN

(sitting throughout in public)

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B E T W E E N :

MANDY C GRAY — Applicant

- and -

WILLIAM RANDALL WORK — Respondent

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MR T. BISHOP QC and MR M. BRADLEY (instructed by Payne Hicks Beach) appeared on behalf of the applicant

MR C. HOWARD QC and MR R. CASTLE (instructed by Hughes Fowler Carruthers) appeared on behalf of the respondent.

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J U D G M E N T

MR JUSTICE HOLMAN:

Overview and introduction

1 This is a wife's application for a financial remedies order after a divorce. There are two significant issues in the case. First, the meaning and impact of a post-nuptial agreement which both parties signed about five years after the marriage. Second, whether or not the husband made what is known as a special contribution such that the amount now payable to the wife should be less than it otherwise might have been.

2 The relationship and marriage were of relatively long duration amongst those that end in divorce, namely about 20 years. At its outset both parties were young, in their early to mid twenties. They had similar modest incomes. They had no capital. The parties are now in their mid to late forties. Entirely during the marriage, the husband was to earn considerable wealth. The wealth later reduced in value but he still admits to net wealth of around US $225,000,000, or about £144,000,000. There is, therefore, more than enough to go round, and this is not a needs based case.

3 During the 20 years the wife was a good wife and a good mother to their two children. She loyally moved with the husband to live in Japan where he was to generate the wealth in the space of eight years. In those circumstances, subject to any "special contribution" to which I will later refer, fairness and sharing may result in an approximately even sharing of the wealth, or provision for the

wife of the order of $112,000,000 or £72,000,000, if the husband's wealth should be taken at the net discounted figure which he claims.

4 The husband's open offer, which he has never increased during the hearing, is that he will not pay to the wife a single dollar or penny of his own assets or own separate property. He will merely pay to her $5,000,000, which is the value that he attributes to her own separate property which is currently in his possession or control. Out of that $5,000,000 he says that she must pay all her current debts (mainly the costs of these proceedings), totalling about $1,630,000, to leave her with about $3,370,000. Out of that she would have to house herself, as well as provide an income for herself. He, meanwhile, would keep the parties' luxurious house in Kensington, London, worth about £30,000,000 and also their fabulous holiday house in Aspen, Colorado, worth about $29,000,000 or £18,000,000.

5 The husband says that "unfortunately" that is the result and effect, in the circumstances as they now are, of a post-nuptial agreement to which I will later refer, and of the wife's decision not to accept the amount previously offered by him. "Unfortunately" the wife would retain about 2 per cent of the wealth and he would retain about 98 per cent.

6 Before, and during the course of, the hearing I have repeatedly urged the parties to settle their differences. As I have repeatedly pointed out to them, this should be the easiest of cases to settle. There is plenty of available capital and liquidity is not a significant issue. The case is, and particularly was at the outset of the hearing, pregnant with litigation risk for both sides. Further, a huge advantage of a carefully negotiated settlement would be that there could be a carefully negotiated division and allocation of particular assets, from large portfolios in funds to individual works of modern art. Finally, a settlement would have given to the parties ownership of their agreed outcome and preserved their dignity. Instead, the hearing has been one of unedifying and destructive pugilism.

7 I have been told that there have been attempts to settle, but of course I do not know, and can never be told, how much divides them. I only know that the husband has not budged on his open offer of $5,000,000 (all of it already her own assets) and not, as I understand it, a penny more. Since the introduction of the modern rule in Family Procedure Rules, rule 9.28, the respondent is required to make an open proposal which clearly must be a genuine one, and it is on the fairness of that open offer and proposal that his reasonableness will be judged.

8 Prior to the hearing I notified both sides that I provisionally thought I should hear this case in public. All counsel attended in robes, and there was no suggestion by or on behalf of either party that I should not hear it in public. My reasons are broadly similar to those which I expressed in *Luckwell v Limata [2014] EWHC 502 (Fam)*, at paragraphs 2-5, which I incorporate by reference into this judgment but will not repeat. Press have attended most of the hearing. They have agreed not to mention in any report the names of the parties' two children, nor the schools they attend, nor the actual address of the home in Kensington, and I am confident that I can rely on their integrity in that regard.

9 The parties have spent approaching £3,000,000 on legal fees and associated expenditure. For that, you get very high quality legal teams, and each of them has been very well represented, but it does not appear to have facilitated a conciliatory outcome to this case.

10 Further, some of the spending has been, in my view, profligate and unnecessary. Ordinary people litigating in the family courts about very serious issues, such as whether their children should be adopted or returned from care or whether life support of a child should be maintained or ended, do not have the luxury of, nor, frankly, the need for, two shorthand writers in court throughout the hearing, producing overnight transcripts to which negligible

reference was later made. It is an extravagance. Whilst it was a privilege to hear from two Texan matrimonial lawyers, I do not think the cost of their travel and attendance was justifiable or necessary.

11 The bundles were excessive and proved inconvenient for me, for witnesses who struggled with them in the witness box, and at least at one stage for Mr Howard QC. At one point we had the absurdity of going to one bundle for a letter and another bundle for the reply. There was a pre-trial hearing before a circuit judge on 3rd December 2014. He had no other involvement in the case either before or after that day. Amongst many other directions, he did formally give "permission for the trial bundle to be extended to six lever arch files..." I asked Mr Tim Bishop QC, who appeared on behalf of the wife, and who was present on 3rd December 2014, whether the circuit judge had exercised his own independent discretion in agreeing to six bundles, or whether he had been seduced by counsel. Mr Bishop immediately and frankly said that the judge had been seduced by counsel and that it was not an independent assessment by the judge. It was rubber stamped. This is not how the very important Practice Direction 27A is intended to be applied. Further, the cardinal and over arching words of the practice direction are the opening words of paragraph 4.1: "The bundle shall contain copies of only those documents which are relevant to the hearing and which it is necessary for the court to read or which will actually be referred to during the hearing ..." However many bundles the court may

authorise, there should be no document within them which does not fall within that rubric in paragraph 4.1. I have not kept a tally in the present case, but I am confident that the total number of documents read or referred to is less than half the total of well over two thousand pages assembled in the bundles.

12 In his judgment in *L (a child) [2015] EWFC 15*, handed down last week, the President of the Family Division has given due and crystal clear warning that these excesses will no longer be tolerated. What I wish to emphasise is that although that judgment related to care proceedings, every single word of the relevant part of it applies no less, and arguably more, to financial remedy proceedings.

The facts in more detail

13 Both parties were born and brought up as American, and both were living in California when they first met. The husband was born in March 1967 and will be 48 next week. The wife was born in May 1969 and will soon be 46. They first met in 1992 and soon began to live together. He was then aged 25/26. She was 23/24. They became engaged in 1993, although they did not marry until March 1995, in Los Angeles.

14 When they first lived together each had good but modest jobs. The husband then studied in California for an MBA between 1994 - 1996 while the wife continued to work. They had no appreciable capital at all and there is no family or inherited wealth in this case.

15 In 1997 the husband was offered a job with a private equity fund called Lone Star, in Dallas, Texas. The wife gave up her secure job in California and they moved to Texas. The husband began working for Lone Star in July 1997. In October 1997 the parties bought a modest house in Dallas, with a mortgage. Very soon, Lone Star offered the husband a role in Tokyo, Japan. This obviously would entail great social and cultural upheaval for both parties, but they saw the opportunities and decided to move to Japan. The husband worked full time in Japan from about November 1997. The wife joined him there in May 1998.

16 I will deal with the nature of the husband's work in Japan more fully below, under the heading "Special contribution". Essentially, he was running the Lone Star office in Japan and engaged in investing in distressed assets following the downturn in the 1990s of the Japanese economy. He unquestionably worked very hard for eight years in Tokyo, with acumen, skill and drive. He generated vast profits for Lone Star and considerable earnings and wealth for himself.

17 The parties' son was born in January 2000. He is now aged 15 and is a boarder at a well known boys' public school in England.

18 In October 2000 the parties both signed the post-nuptial agreement(s). Although the parties had no continuing connection with Texas other than that the headquarters of Lone Star were located there, the agreement was negotiated between Texan lawyers, and the wife flew to Texas actually to sign it. I will deal more fully with the terms and effect of the agreement under the heading "The post-nuptial agreement" below.

19 One clear purpose and effect was to "partition" the parties' separate property, that is, to terminate any community of property under Texan or American law, and to provide that the property, including future earnings, of each of them was kept separate and distinct and was the property respectively of him or her alone.

20 This was done in anticipation of implementing the husband's decision to "expatriate", that is, to renounce his American citizenship, which he did purely in order to avoid or save tax. He expatriated in 2001 at which point he became a citizen of Grenada, a small Caribbean island with which, so far as I am aware, he had no, or no significant, other connection.

21 The parties continued to live seamlessly in Tokyo, Japan. Their daughter was born in February 2003. She is now aged 12 and is currently a boarder at a well known girls' public school in England.

22 In 2005 the family moved to live in Hong Kong. By now the husband had made a considerable fortune and he considered that they could enjoy a more agreeable lifestyle in a low tax environment in Hong Kong, whilst he was still able sufficiently to manage the business of Lone Star in Japan. This proved more difficult than expected and his business success diminished.

23 In 2007 the husband bought the house in Kensington, London where he still lives. In 2008 the husband's employment with Lone Star ceased and the family moved to live in England, at the house in Kensington. The husband was then aged just under 40. It is said that at its highest he had accumulated actual personal wealth of about $300,000,000, with further paper wealth in Lone Star (which he was not able later to realise) of about a further $150,000,000. So, on one presentation, the husband had amassed about $450,000,000 in about eight years, and on any view, about $300,000,000.

24 The wealth is actively managed by a bespoke company and several staff located in Dallas, Texas. Clearly, the husband remains in overall management

and control of it, but effectively he has not worked since 2008, but has lived off and enjoyed the fruits of his earlier labour and endeavour.

25 In 2012 the husband became a citizen of Ireland, which, of course, gives him the right of free movement within the European Union as a citizen of the EU, although any connection with Ireland appears to have been, and now is, very tenuous. The purpose of these citizenship manoeuvrings has been to minimise worldwide exposure to tax.

26 The husband paid low taxes while living in Japan and Hong Kong. The husband told me that in the seven years that he has lived, as his main home, in England, he has paid, in total, about £100,000 in UK income tax. That is an average of less than £14,000 per annum, although he has a fortune of at least £140,000,000 and a worldwide income of several million pounds a year.

27 The wife, too, has taken steps to save tax on her expected fortune. In November 2014 she also expatriated from America and became a citizen of Saint Kitts and Nevis, two small Caribbean islands with which, so far as I am aware, she has little other connection. She lives, and says that she desires to continue to live, in London.

28 In early 2013 the wife formed an emotional, and soon a sexual, attachment with a man, Mr H, who was the parties' personal physiotherapist. There was some dispute and some oral evidence about the precise chronology of events, but it is irrelevant to anything I have to decide. I am quite satisfied that the husband was very shocked and very hurt by his wife's infidelity and affair. It also caused considerable upset to the children, and in particular to their daughter.

29 The parties have not lived together since the very end of March 2013, when the wife left the home. She has since lived in a rented flat, also in Kensington, where she lives with Mr H. He is aged 42. He is a divorced man but has no children.

30 The parties themselves were, therefore, in a relationship of about 20 years from first cohabiting in 1992 until rather abrupt separation in March 2013. The wealth was entirely generated within that period.

31 In May 2013 the husband presented a petition for divorce. Patently England was the obvious jurisdiction for any divorce as both parties and their children were, and for several years had been, habitually resident here. But it is the fact that it was the husband who petitioned and invoked the jurisdiction of the English court under which the wife now makes her claims.

32 On 27th July 2013 the husband sent a quantity of documents to the wife in support of his calculation that his "net worth" for the purpose of certain provisions of the post-nuptial agreement was (in round figures) $216,000,000, or $176,000,000 after further discounts for illiquidity. He offered to pay her $71,000,000 by six instalments over five years, pursuant to certain terms of the agreement.

33 It is important to stress that although he now does not offer her a penny, the husband did put and leave on the table for about six months an offer to pay $71,000,000, but by instalments of about $11,500,000 per annum.

34 The wife did not accept it, essentially for three reasons. First, she did not accept the asserted wealth figures upon which the offer was based. Second, the offer was essentially one of 40 per cent of the net wealth. She considered, as she still does consider, that in fairness she is entitled to half. Third, as the husband had and has considerable liquidity, she considered that the proposal to pay by instalments over five years, with no provision even for any interest, was unacceptable and would seriously erode the value of the offer.

35 Instead, the wife applied in Form A for the court to award her all forms of financial remedies, including a transfer to her of the house in Kensington and

the parties' holiday home in Aspen, Colorado. That form was served upon the husband in mid January 2014, at which point, by a letter dated 17th January 2014 (now at bundle 3: G, p.641), the husband's solicitors treated the offer as rejected. Mr Charles Howard QC, on behalf of the husband, says that I should treat the offer to pay $71,000,000 as being withdrawn from that date in January 2014.

36 Since then, the husband has not open offered to pay one penny. Instead he asserts that under the post-nuptial agreement the wife, having not accepted the $71,000,000 nor invoked certain valuation provisions in relation to the quantum of it, is now entitled to nothing. And so this Titanic battle was joined.

37 The wife currently has no capital at all and large costs, or costs related debts. The husband is required to pay her and does pay her £130,000 per month as maintenance pending suit.

The post-nuptial agreement(s)

38 Clearly, the first question I have to decide is the meaning and impact upon outcome of the post-nuptial agreement(s).

39 The wife is now applying to the court of England and Wales for financial remedies pursuant to the Matrimonial Causes Act 1973, as amended. In the case of *Granatino v Radmacher [2010] UKSC 42, [2011] 1 AC 534*, the Supreme Court made crystal clear that on such an application "The court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement."(see Lord Phillips of Worth Matravers and others at paragraph 75)

40 The husband says that by 2000 his overall net worth had reached about $5,000,000. It was obvious that the move to Japan was yielding very good earnings, and the parties expected that he might generate greater wealth. He wanted to protect his income and assets from tax, and in particular the worldwide reach of American taxation of its citizens. He decided to expatriate. The decision to expatriate was driven solely by the motive to save tax. In anticipation of the actual expatriation the parties negotiated and signed the agreements.

41 The husband says that as far as he was concerned the actual purpose and motivation for the agreements was as follows. They were very happily married and neither of them had any thought at all of divorce. Nevertheless, if he was going to forsake his American citizenship to save substantial tax, then he

considered it was only fair that if the parties did, later, unhappily divorce, he should retain more than half the wealth and she should receive less than half. The husband says that that was the sole purpose of the agreements, even though the background context was expatriation and the saving of tax. The wife says that her understanding was and is that in order to ensure that the expatriation would make a watertight (my word, not hers) saving of tax, it was necessary to have a formal partition of property. She was going, at that stage, to remain an American citizen, as she did for a further 14 years, and it was important to be sure that the American authorities could not attack the wealth through her citizenship and an argument as to community of property.

42 Although these perceptions differ, there is no doubt that the underlying context of the agreement was the proposed expatriation and that the motive and purpose of expatriation was to avoid or save tax.

43 As I understand it, the founding partners of Lone Star (far more wealthy than the husband in this case) had themselves recently entered into similar agreements, and the agreements in the present case were modelled on those agreements.

44 There were, in fact, two agreements. The first is headed "Agreement between Spouses". The second is headed "Addendum Agreement between Spouses".

45 The husband actually signed the agreements in Tokyo, before an American consul there. The wife actually signed them in Dallas, Texas, before a notary public there. But each respectively signed each agreement at the same place and at the same time, signing one agreement immediately after the other.

46 The Texan lawyers who have given evidence in this case are quite clear that in these circumstances the two agreements should be considered as one and interpreted as a whole, albeit in two parts. I do not accept the submission of Mr Tim Bishop QC, on behalf of the wife, that the addendum agreement should be viewed as a later amendment or modification of the agreement between spouses, as contemplated by clause VIII of the agreement between the spouses. It was not a later agreement. It was one part of an overall agreement, the signing of which was separated in time from the signing of the agreement between spouses only by the time it takes to turn a page and write a second signature.

47 More perplexing and difficult is the question why were there two agreements in form when the contents could have been drafted as one. The husband says that he does not know the reason, and that the agreements were prepared or drafted by the wife's lawyers in Texas, although they may have employed the earlier agreements of the founding partners of Lone Star as templates.

48 I found that particular answer unconvincing. It was the husband who wanted the agreement in anticipation of his expatriation. Although he remained in Tokyo, he had his own separate lawyer acting in Texas. He is an astute businessman who would have read the agreements with care. Whatever the reason for two agreements, he must have known what the reason was.

49 The wife says that her understanding was and is that the reason for two agreements was that the first, which firmly partitioned the property, would or could be shown to the American tax authorities. The second or addendum agreement would not be. I unhesitatingly accept the truthfulness of the wife's evidence that that was and is her understanding. Whether that was, in fact, the reason why two agreements rather than one were drafted, I cannot say.

50 The wife's Texan law expert in these proceedings, Mr Richard L. Flowers junior, who did not act at the time of, or have anything to do with, the preparation of the agreements, suggests that the reason for two agreements was indeed for tax purposes, as the wife describes.

51 The husband's expert, Mr Ike Vanden Eykel, who likewise had nothing at all to do with the preparation of the agreements, says that that is mere speculation. He says that post-nuptial agreements can indeed be drafted as two separate but

concurrent documents or agreements. He says that it is not unusual to have two documents, although it is not the norm. He suggests (but no less speculatively) that the draftsman thought that if one agreement was, for some reason, set aside, the other would survive.

52 Very late indeed during the hearing an email was sent to Mr Ronald Kesterson, the lawyer in Texas who actually acted for and advised the wife at the time of the agreements, asking why there were two. An even later email reply, dated 3rd March 2015, states that "Ron's recollection is that husband and husband's counsel believed that having the agreements in two documents instead of one would better serve husband's tax planning purposes (Ron was not privy to the details). No substantive difference was intended by the parties in having two documents instead of one."

53 The second sentence of that email "No substantive difference … instead of one" is, of course, consistent with, and supports the evidence of Mr Flowers and Mr Vanden Eykel that nothing turns on there being two agreements and that they should be read as one.

54 The first sentence "Ron's recollection … (… not privy to the details)" is, of course, consistent with what the wife now states her understanding to have been and to be. However, I cannot attach any weight at all to that sentence of

that email for the following reasons. First, it came very late indeed. Second, it did not, in fact, come from Ron Kesterson, but is merely hearsay as to his recollection, although Ron Kesterson appears to be alive, well, and available, and there is no explanation why he could not have sent his own direct response. Third, there has been no opportunity to cross-examine or ask Ron Kesterson any follow up questions. Finally, the email is no more than a statement of what Ron Kesterson recalls (14 years later) the husband and his counsel to have believed. There has been no opportunity for any enquiry of the husband's then counsel. In the upshot, I entirely ignore the first sentence of that email. The agreements are formal legal documents, prepared and drafted by lawyers, not by the parties themselves, and I simply do not know and will not speculate why there were two rather than one.

55 So that anyone reading this judgment can read all or any part of the agreements for themselves, I annexe them in full as an electronic link at the end of this judgment. They repay reading in full, and I have now done so many times, but in the text of this judgment I can only highlight, very selectively, the more important parts. The agreements were signed on, and expressed to be effective as of, 25th October 2000 (the husband actually signed on 26th October, Tokyo time, but that was concurrent with 25th October, Texas time).

56 Each agreement begins with a clear statement, in capital letters, to the effect that each party "may" be permanently surrendering claims he or she would otherwise have.

57 The first agreement, the agreement between spouses, recites that the parties desire to establish their respective rights in certain properties, and to partition any of such properties which may be community property. The fourth recital on page 2 makes plain that the partition applies not only to existing properties but to all income or property arising in the future, and in summary, that the income of each shall be the separate property of that respective party.

58 On behalf of the husband, Mr Charles Howard QC particularly stresses the third recital on page 2, that "WHEREAS, it is the intention of each party to disclaim, release, relinquish, renounce, and waive any and all of the rights, claims, and demands of every kind whatsoever that may now exist or may hereafter arise in favour of such party or that such party could ever assert against the other party, with respect to all of the separate property of the other party as described in one of said schedules or any part thereof, and any monies, properties, or other things of value into which any of said separate property may be changed, exchanged, invested, or reinvested".

59 Mr Howard strongly submits that that is clear evidence that the wife was disclaiming and renouncing, for all time, all claims that the wife could ever assert against any of the property of the husband, including (because of the following preamble) his future income. Clauses I and II of the agreement between spouses then "partition" the property and all future income.

60 The Texan lawyers agree that the language and effect of clauses I and II alone are sufficient, under Texan law, to effect the desired partition of property. Mr Howard therefore very strongly submits that clause III must have been intended to have, and did have, some different or additional purpose, and it is upon clause III of the agreement between spouses that the husband and Mr Howard most heavily rely. It provides as follows :

> "III.
>
> It is specifically agreed that in the event of termination of the marriage of the parties by divorce or death, husband will have no right, title, interest, or claim in, to, or with respect to any of the separate properties then owned by wife, except, in the event the marriage terminates on account of the death of one of the parties, as provided by wife's will or by other valid testamentary disposition; and wife will have no right, title, interest, or claim in, to, or with respect to any of the separate properties then owned by husband, except, in the event the marriage terminates on

account of the death of one of the parties, as provided by husband's will or by other valid testamentary disposition."

61 Although elaborated over many pages and much argument and evidence, the essential thrust of the husband's and Mr Howard's case is quite simple and is as follows. Clause III says that "...[the] wife will have no...claim in, to, or with respect to any of the properties then owned by [the] husband..." The clause is divorce or death specific. The wife thereby agreed that in the event of divorce she would have no claim in, to, or with respect to "any of the properties then owned by[the] husband" and that absolutely precludes her from making, or at any rate succeeding upon, any claim now.

62 The agreement between spouses provides, in capital letters, in clause V that it "shall be governed by, and construed in accordance with, the laws of the state of Texas."(That clause is repeated in the addendum agreement.)

63 The agreement between spouses concludes at clause VII with an acknowledgement by each party that it is fair and not unconscionable and that it is entered into voluntarily after legal advice, fair and reasonable disclosure, and (in summary) due consideration. (That clause also is repeated in the addendum agreement.)

64 As Mr Bishop emphasises on behalf of the wife, it is striking that the agreement between spouses makes no reference whatsoever so the addendum agreement. The addendum agreement, however, refers back from the outset to the agreement between spouses.

65 The recitals to the addendum agreements are that:

> "WHEREAS, WILLIAM R. WORK (the "husband") and MANDY C. GRAY (the "wife") have contemporaneously herewith entered into the AGREEMENT BETWEEN SPOUSES in which they have agreed to partition any community property they may own and to give certain properties to each other so as to establish their respective ownership in and to all of their respective properties;
>
> WHEREAS, husband and wife desire to enter into this ADDENDUM AGREEMENT BETWEEN SPOUSES to establish and define certain of their respective rights and obligations during their marriage and upon the dissolution of their marriage by divorce or husband's death; and this addendum, along with the AGREEMENT BETWEEN SPOUSES, shall be construed as one agreement but shall be independent and several in their enforceability;

WHEREAS, neither husband nor wife is contemplating divorce and this addendum is not made because of any thought on the part of either party that such a divorce is likely to occur or is within either party's current contemplation or intention; and

WHEREAS, husband executes this agreement as additional consideration to wife's execution of the AGREEMENT BETWEEN SPOUSES."

66 Mr Bishop strongly submits that these recitals make the whole structure and purpose of the two agreements, or two parts of a single agreement, crystal clear. The express purpose of the agreement between spouses or first part is, as the first recital to the addendum says, to partition their property and establish their respective ownership. The express purpose of the addendum agreement or second part is, as the second recital says, to establish and define rights and obligations specifically upon divorce or the husband's death, although, as the third recital makes plain, neither party is then contemplating or has any thought that divorce is likely to occur.

67 So Mr Bishop submits, and I agree, that it is the addendum agreement or second part which is divorce specific, and expressly dealing with what may happen in the, unexpected and unlikely, event of divorce.

68 Mr Bishop also places considerable emphasis on the fourth recital. The addendum agreement or second part is expressly executed by the husband as additional consideration to the wife for her execution of the agreement between spouses.

69 It is inconceivable, submits Mr Bishop, and I agree, that the wife (who is highly intelligent) would ever have signed the partition and the agreement between spouses but for the consideration given, and protection afforded, by the addendum agreement. When Mr Howard asks, rhetorically, what is in the addendum agreement for the husband, if it has the meaning and effect for which the wife contends, the answer is that it is what he had to agree to, and did agree to, as the consideration for the wife entering into the agreement between spouses, which he wished her to do.

70 Clauses I - IV of the addendum agreement then make detailed provision for calculating a "total sum payable to wife" (TSP) in the event of divorce. It was pursuant to these clauses that the husband offered the $71,000,000 by instalments in July 2013. In summary, the TSP was to be 50 per cent of the first $10,000,000 of the husband's "net after tax worth" as defined in the agreement, and 40 per cent of the remainder of his net after tax worth, the whole to be paid by six instalments, over five years, without interest.

71 Clause I of the addendum agreement includes the following provision:

> "The total sum payable to wife shall be in lieu of any other division of the property of husband and wife upon their divorce and of any obligation of husband to maintain, support, pay alimony to, or make any other payment to wife; and wife agrees that by accepting the total sum payable to wife she shall not be entitled to any of husband's property, including any and all of the property divided by the AGREEMENT BETWEEN SPOUSES, or to any maintenance, support, alimony, or payment of any kind from husband and that the total sum payable to wife shall be in full satisfaction of wife's marital rights, including any rights that she may have to any marital property."

72 Quite clearly, if the wife were to accept the TSP then she could not receive any more. Clause IV makes provision for independent valuation in the event of disagreement as to the husband's pre tax net worth; and the husband now says that if and in so far as the wife was not agreeing the figures he put forward in 2013, her remedy should have been to trigger the valuation provisions of clause IV.

73 The Texan lawyers agree that the effect of clauses I - IV was to give to the wife a contractual right, enforceable as a claim in contract, to the TSP, payable

by the prescribed instalments and ascertainable, if necessary, by application of the valuation provisions. Those provisions are further buttressed by an arbitration clause at clause IX, which provides, in summary, that any dispute "shall be resolved by arbitration, and the parties hereby waive and relinquish their rights to have any such dispute, claim, or controversy determined by a court or in any other manner than arbitration."

74 However, the addendum agreement also contains clause V, and it is upon the protection and effect of that clause that the wife relies. It provides as follows:

> "V.
>
> Notwithstanding any other provision of this addendum, wife is under no obligation to accept the total sum payable to wife as settlement of husband's obligations upon divorce and is free to seek from a court with jurisdiction over any divorce proceeding between the parties (the "divorce court") maintenance, support, alimony, a property settlement, or any other allowable recovery from husband or from property owned by husband ("alternative relief") in lieu of the total sum payable to wife; provided, however, if wife seeks alternative relief from any court, wife shall be deemed to have forfeited and to have relinquished her right to the total sum payable to wife, and, so that there will be no ambiguity or uncertainty as to whether or not wife is seeking alternative relief, wife agrees to file with the divorce court either an express affirmative

election to accept the total sum payable to wife in lieu of any alternative relief or an express affirmative election to seek alternative relief, which shall be determinative as between the parties provided the final relief granted by the divorce court is consistent with the wife's election ..."

75 Mr Howard emphasises the opening phrase of clause V and the words "...notwithstanding any other provision of this addendum..."[my emphasis]. So he submits that whilst clause V may override other provisions of the addendum, and in particular the whole TSP mechanism under clause I, clause V does not impact upon, or qualify in any way, the clear and stark effect of clause III of the agreement between spouses.

76 It is important to stress the lack of mutuality throughout the addendum agreement. It was given as additional consideration by the husband to the wife, and clearly operates to provide protection and specified rights to the wife. Clause V makes clear that the wife is under no obligation to accept the TSP, although the husband is bound, by clauses I - IV, to pay it, unless the wife otherwise elects under clause V.

77 The words "a court with jurisdiction over any divorce" in clause V are unqualified and must refer to any court anywhere in the world having jurisdiction over a divorce between these parties.

78 The opening lines of clause V could not be more clear. The wife is "free to seek" a wide range of remedies, specifically maintenance, support, alimony, or a property settlement, some of which are not obtainable under the law of Texas. She is also free to seek "any other allowable recovery from husband or from property owned by husband..."

79 Mr Vanden Eykel suggested that the phrase "any other allowable recovery" was intended to cover the possibility of the wife having a claim in tort against the husband, but I can see no reason why it should be read in that narrow and limited way. There is no reason why it should not mean any other recovery allowed in the court (wherever it may be) and jurisdiction in which the divorce is, in fact, proceeding.

80 Clause V then makes clear provision for the wife to make a clear and unambiguous election whether to accept the TSP or to seek alternative relief. It is common ground that the Form A issued by the wife, which was served upon the husband in January 2014, amounted to her express affirmative election to seek alternative relief from this court.

81 The husband's laconic and uncompromising construction of clause V and the agreements during his oral evidence is that "She is free to seek but she shall

not receive". (This answer is to be found in the verbatim transcript of Day 3, at p.149, line 16.) In other words, he says that the only right given to the wife by clause V of the addendum agreement is "to seek". The effect of clause III of the agreement between spouses is that she shall not receive anything. The effect of her election to seek alternative relief is that she has forfeited and relinquished her right to the TSP. Hence he now uncompromisingly, and in my view punitively, does not open offer her a single penny. He says that "unfortunately" that is the "consequence" of the agreements and her election.

82 Although these agreements have been the subject of painstaking consideration, and many hours of evidence and argument, including the oral evidence of Mr Flowers and Mr Vanden Eykel, I firmly reject and disagree with the husband's and Mr Howard's construction.

83 On their construction, the protection afforded to the wife by clause V is utterly illusory. "She is free to seek but she shall not receive." The wife could not conceivably have thought, imagined or intended that, nor could her lawyers if they were even remotely giving her good legal advice.

84 Mr Flowers says that the effect of clause V is to "put back on the table" the partitioned and separate property of the husband in the event of divorce. Mr Vanden Eykel very strongly disagrees with that. He says that the only purpose

and effect of clause V can have been as a saving clause to prevent the agreements from being struck down in some jurisdiction as ousting the jurisdiction of the court. But even if that was the only intended purpose and effect of clause V, the clause could only achieve that effect if it gave a real and not an illusory right to the wife. An agreement which says that you can apply but you cannot receive anything is, to my mind, tantamount to excluding the jurisdiction of the court. If that was the only purpose of clause V (upon which I disagree with Mr Vanden Eykel) it in any event does not achieve it.

85 I acknowledge the tension between clause III of the agreement between spouses, and the addendum agreement generally and clause V of it in particular, but they have to be read together as a coherent whole. The addendum agreement, including clause V, must have a purpose. It was clearly part of the consideration to the wife for executing the agreement between spouses. It was clearly intended to afford real and not illusory protection to the wife.

86 Even if clause III of the agreement between spouses was not necessary in order to effect the partition, and clauses I and II could have stood alone, clause III must be part of the partition process to which the agreement between spouses was directed, as the recitals to both agreements make plain. The agreement which was clearly making detailed provision for the unexpected eventuality of

divorce was not clause III of the agreement between spouses, but the whole of the addendum agreement, of which clause V is an integral and vital part. It gave clear options to the wife to accept the TSP, or to make a wide ranging claim for any "allowable recovery" in the divorce court wherever that happened to be.

87 In 2000 the parties had no idea where an unexpected and unforeseen divorce might take place, but they certainly would have had no contemplation of England and Wales, with which they had no connection at all at the time.

88 If, perhaps, the parties had remained living in, and had divorced in, Japan, or perhaps moved to some other state which made little or no provision for wives on divorce, perhaps in the Arab world, and divorced there, then the TSP provisions might have afforded vital and valuable protection for the wife. They were a platform below which her claims and recovery could not fall. But they were not a ceiling. As it happens, the parties have now lived for several years in England. As it happens, the approach to discretionary distribution of property in England and Wales has moved in the last 15 years towards a yardstick (although by no means necessarily a finishing point) of equality after a long marriage, and where there is an excess of assets over the parties' needs.

89 In my view, the wife was fully entitled, under the terms of the agreement, to elect not to accept the TSP but to pursue a real and not an illusory claim for a range of statutory remedies against all the husband's assets, and the agreements do not in any way limit or impact upon the powers and discretion of the court.

90 It is a forensic point and not a point of construction, but Mr Bishop points out that the husband's own initial position at the outset of these proceedings is clearly stated in Part 4 of his own petition for divorce, which was issued on 14th May 2013 and which was undoubtedly drafted by his very experienced solicitors. He wrote: "There are no proceedings elsewhere but there are two binding agreements between the parties...one of which ('the addendum agreement') determines the parties' respective rights and obligations on divorce." As Mr Bishop says, that clear recognition and assertion that it is the addendum agreement which "determines the parties' respective rights and obligations on divorce" does not lie easily with the later assertion and reliance that it is under clause III of the agreement between spouses that "she shall not receive".

91 Mr Bishop also makes the point that in correspondence in late 2013 the husband was pressing the wife hard to accept the TSP. It is difficult to understand why he should have been doing so if, as he now contends, the consequence of her rejection of it is that he would have to pay her nothing.

92 For these reasons, I unhesitatingly and firmly hold that the agreements do not in any way limit or impact upon the wife's right to seek, and the court's unfettered power (and indeed duty) to make, discretionary awards.

93 Mr Vanden Eykel stressed in his written and oral evidence that if there was a divorce in Texas, the Texan court could not make any award against the partitioned separate property of the husband.

94 Mr Flowers did not accept that, considering that the effect of clause V was to put the husband's property back on the table. But even if Mr Vanden Eykel is completely correct, it makes no difference whatsoever. This is not a divorce in Texas. Indeed, both Texan lawyers agree that in 2013 there could not have been (nor could there now be) a divorce in Texas, since neither party has had any sufficient connecting factor with Texas (such as residence there) for many years.

95 This is a divorce in England and Wales. Nowhere in the agreements do they state that even in the case of a divorce outside Texas, the divorce court shall apply the law of Texas, or reach the result that a court in Texas would have reached. Although, if Mr Vanden Eykel is correct, a Texan divorce court has no power or jurisdiction over partitioned and separate property, that simply is

not the position here. Under the law of England and Wales, the court is required to have regard to all the property of both spouses, and all their property is subject to the jurisdiction of the court even if, as a matter of discretion, certain property (such as pre-marital or inherited wealth) may be treated differently, or ultimately left out of account.

96 It is simply irrelevant that (if Mr Vanden Eykel is correct) a court in Texas could not make any award against the husband's separate partitioned property.

97 I conclude that the agreement(s), properly construed, have no continuing relevance to, or impact upon, outcome in the events which have happened, viz that the wife has made her election.

98 The only continuing relevance of the agreements is to make clear, which is not disputed, that there is currently no shared or community property and that that which the husband owns belongs currently to him and to him alone.

99 If I am wrong in these conclusions, and if the agreement(s) properly construed and applied do have the meaning and effect which the husband and Mr Howard claim and submit, then I consider that in the circumstances of this case no weight or effect should be given to them. If the agreements have the meaning and effect for which the husband contends, then the wife most certainly did not

have “a full appreciation of [their] implications” (Lord Phillips of Worth Matravers and others in *Granatino* at paragraph 75).

100 The wife in fact received no legal advice at all as to the effect of the agreement in any place other than Texas, as is clear from the terms on page 2 of the engagement letter from her lawyers, Baker Botts LLP, dated 25th October 2000 (now at supplemental bundle pages 32 and 33). That clearly states that “We will **not** be advising you, and therefore, will not be expressing any legal opinion on, the following matters ...” which include, in summary, how a court of a state other than Texas would interpret and/or enforce the agreements, and “the nature and extent of the marital property rights and responsibilities that will accrue to you in non Texan places and how the agreements might affect … those rights and responsibilities...”

101 The wife did receive advice as to the meaning and effect of the agreements in Texas, and her evidence (which was credible) was as follows (reading from the verbatim transcript, Day 2, p.63 - 64, lines 23 - 8):

> “Mr Howard: It was made quite clear to you, wasn’t it, Ms Gray, that if this had been litigated in Texas, you wouldn’t have got any more than the TSP because of the partition agreement?

A. No, I do not agree with that statement. That is not how it was explained to me at all. Yes, we partitioned our assets but the addendum agreement put everything back into our mutual property, so that I could go against that. In fact, my lawyers anecdotally said 'here in Texas we start at 50 per cent for the wife and we go up from there'."

102 Mr Vanden Eykel says that if she received that advice it was incorrect advice. But it goes further than that. If the agreement has the meaning and effect for which the husband and Mr Howard contend, then the wife would have to have been positively advised that clause V gave her no protection at all, and specifically advised that if she elected not to accept the TSP, she was then free to seek or claim but could not receive anything.

103 I am in no doubt at all that the wife was not given such advice, for if she had been, she would not have signed either agreement. If (which I reject) the agreement has the meaning and effect for which the husband and Mr Howard contend, then the wife was given abysmally wrong legal advice and should not be held to it.

104 I stress, however, that my own view is that the agreement does not have that meaning or effect. It was, indeed, a good and fair agreement from the point of view of the wife. It gave her the minimum platform of the TSP, wherever they

were divorced, and the ceiling of "allowable recovery" if they happened to divorce in a jurisdiction in which more favourable provision was, or was likely to be, made for her.

105 Additionally, the formulation in *Granatino v Radmacher* makes clear that effect should be given to a nuptial agreement "unless in the circumstances prevailing it would not be fair to hold the parties to their agreement." At paragraph 80, Lord Phillips of Worth Matravers and others said that "The circumstances of the parties often change over time in ways or to an extent which either cannot be or simply was not envisaged. The longer the marriage has lasted, the more likely it is that this will be the case." (In the present case, which concerns a post-nuptial agreement, the relevant length is, of course, not that of the whole marriage, but that of the period between the post-nuptial agreement, October 2000, and the present time.)

106 The TSP provisions of the addendum agreement provided for payment by instalments over five years. The husband has explained, and I quite accept, that at the time of the agreement his total wealth was about $5,000,000, and that he had limited liquidity. He could not, therefore, agree to pay a significant percentage of his wealth other than by instalments. In the intervening 14 years that situation has utterly changed. Not only does the husband have considerable wealth and a huge surplus over his own reasonable requirements,

but he also has considerable liquidity. Indeed, in his final submissions this week Mr Howard, on instructions, said that if the husband was ordered to pay a substantial lump sum, he would pay $60,000,000 within 28 days and the balance within 62 days thereafter, i.e. the entire sum within three months starting from today.

107 Even if the TSP was not unfair as to percentage, it had become grossly unfair with its provision for payment by instalments over five years "without interest". Even if for no other reason, the wife was fully justified in rejecting the TSP for that reason, and it is grossly unfair if "unfortunately" the "consequence" now is that she can receive nothing.

The section 25 factors

108 Putting aside the agreement for the above reasons, I now turn to the section 25 factors. I must give first consideration to the welfare, while minors, of the two children. I will make further brief reference to that in paragraph 168 below, when I consider the wife's claim to a specific transfer of one of the properties. At this stage it is sufficient to say that there is so much available capital in this case that whatever award I make for the wife it need not have any adverse financial impact upon the children.

109 I must then have regard to all the circumstances of the case, and in particular to the matters listed in section 25 (2) to which I now turn, although not in the order in which they appear in that subsection.

110 The husband and wife are now respectively aged almost 48 and almost 46 and I take the duration of the marriage and relationship as 20 years. Both parties are physically and mentally fit, and neither has any physical or mental disability. The husband has been a world class triathlete in his age range. There is no loss of benefit to either party of the kind contemplated in paragraph (h).

111 There is no negative conduct of either party which it would be inequitable to disregard. The wife did form an emotional and sexual attachment with another man, Mr H, and left her husband to start living with Mr H. For at least 40 years the courts have not regarded such conduct, without more, as impacting on outcome.

112 The standard of living enjoyed by the family before the breakdown was very high. It is important to stress that they are millionaires but not remotely billionaires. Their standard of living and lifestyle was that of the rich, but not that of the fabulously rich. They had a fine house in one of the most fashionable streets in Kensington, beautifully decorated, equipped and furnished, and containing a swimming pool and large gymnasium. They had a

magnificent holiday home in the fashionable resort of Aspen, Colorado, which is renowned both for the quality of its skiing in the winter and for its many summer activities. They travelled to exotic places in many parts of the world, sometimes by private jet, otherwise usually first class, and they stayed in expensive and luxurious hotels. They chartered large yachts. They were attended by staff in their home.

113 They now have similar financial needs to each other. The husband generously provides homes for his own brother and for the wife's father, and provides some income to the wife's father and to his own mother. These are continuing financial responsibilities upon him, but the cost of them and impact on his wealth or income is very marginal in this case. That apart, each of them has no particular financial obligations and responsibilities, save to each other and to their children.

114 As to financial resources, there is not the slightest suggestion that either of these parties ever needs to, or should, go out and earn money again. Earning capacity in the sense in which it is used in paragraph (a) is irrelevant, although I have no doubt that each of them does have the capacity to go out and get good and well paid jobs. There are no other financial resources than the assets as they currently are.

115 The income of the parties is the income which they respectively choose to generate from those assets. Obviously, in a case such as this, there is a wide range of possible income, depending on the extent to which a party chooses to invest to maximise income or maximise growth. Currently, the husband has an income of several millions of pounds, or dollars, a year.

116 There is a continuing dispute about the true scale of the assets. These essentially comprise the house in Kensington, the house in Aspen, the contents of these properties, including antiques, furniture and modern works of art, valuable vehicles, horses and other sundry items, and the invested funds. These funds range from cash in the bank, through readily marketable securities, to a large number of investments in hedge funds, private equity funds, and venture capital funds.

117 In total, there are about 70 such discrete funds in the asset schedule, with values ranging from about $20,000,000 to only about $20,000. There is a current dispute in this case as to the appropriateness and size of discounts that the husband wishes to apply to many of these assets, to reflect their non-marketability or restrictions on transfer and other factors.

118 The result is that the husband asserts a total net worth of around $245,000,000, which, however, he says should be discounted down to about $224,200, 000.

There is a difference there of about $20,000,000, so if the wife were to receive a percentage, whether 50 per cent, 40 per cent, or some other realistic percentage, the impact of the discounts is potentially to reduce the value of her award by several million dollars.

119 The wife and her legal team have attempted to avoid the dispute as to discounts by proposing what they call Wells v Wells sharing. They have identified about 24 assets in the asset schedule which they suggest should be transferred in whole or in part to the wife, inclusive of any inherent discount. Whilst I welcome and appreciate their desire to minimise costs and potential further litigation, I am unable to accept that proposal. The present hearing has been largely occupied with the evidence and argument as to the two issues of the agreement and of special contribution. There simply has not been time, in the time estimated and allotted for this hearing, to hear either evidence or argument as to discounts.

120 Mr Bishop says that their proposed Wells v Wells sharing list contains "duffs" as well as "plums". But that is mere assertion. I am simply unable to engage judicially in consideration of discounts, save on an item by item basis, upon which the court would need to hear both evidence and argument.

121 For that reason, I made clear at a relatively early stage of the hearing that (i) apart from the wife's claim to one of the properties and to a share of the art, I could only consider this case and make an award on a lump sum basis; and (ii) at this hearing I would treat the assets as having the discounted value that the husband asserts, i.e. treat them as having no less than the net discounted value to which he admits.

122 It will be left expressly open to the wife to investigate whether the true and appropriate net worth of the husband should ignore the discounts for which he contends, and should be taken at the higher, undiscounted figure of around $245,000,000. The wife will receive the same percentage of the difference between the two figures as I award her in this judgment of the admitted net worth.

123 It was in part because of this dispute as to discounts that I so strongly urged upon the parties the advantages of negotiation and settlement. It could have been very easy, in negotiation, to identify a range of assets which might be transferred to the wife in specie, as part of settlement of her claim. After the major issues as to the agreement and as to special contribution have been determined by this judgment, and in the light of the very bruising and painful experience of the past two weeks, I fervently hope that the parties will, indeed,

now resolve the lingering issue as to discounts by sensible negotiation and give and take. I hereby urge and encourage them, very strongly indeed, to do so.

"Special contribution"

124 Paragraph (f) of section 25(2) requires the court to have regard to "the contribution which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family."

125 Paragraph (g) of section 25 (2) requires the court to have regard to "the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it."

126 Nothing in paragraph (g) limits that factor to bad or negative conduct, and quite clearly especially good and positive conduct must be taken into account if it was such that in the opinion of the court it would be inequitable to disregard it.

127 In this case, the husband claims and Mr Howard submits that the husband has made a particular contribution by earning and amassing so much wealth, and by the acumen and drive with which he did so, which, they claim and submit,

is unmatched or not balanced by the contributions which the wife made to the welfare of the family. The husband claims and Mr Howard submits that this should be reflected by his retaining more and her receiving less of the overall wealth.

128 There is no doubt that the law recognises that, in some cases, one party may have made (or may in the future make) what has been labelled a "special contribution" and that that may impact upon outcome. The House of Lords clearly said so in *Miller v Miller [2006] UKHL 24, [2006]2 AC 618*, and the Court of Appeal said so in *Charman v Charman (No.4) [2007] EWCA (Civ) 503, [2007] 1 FLR 1246.* I therefore unhesitatingly and unreservedly accept that there can be cases and situations in which a special contribution is identified which should and does impact on outcome.

129 There is also no doubt that, in practice, such cases have been rare. In *Lambert v Lambert [2002] EWCA (Civ) 1685, [2003] 1 FLR 139,* decided in November 2002, the Court of Appeal expressly and avowedly intended to close down what had been described as a Pandora's Box of special contribution claims in what Baroness Hale of Richmond later described in *Miller* as "the retreat from the concept of special contribution". In *Lambert* itself the Court of Appeal set aside a 63:37 percentage reduction to reflect special contribution and awarded to the wife 50 per cent.

130 Counsel have only been able to identify three reported cases in the 12 years since *Lambert* in which a court has, in fact, made a reduction or unequal award in order to reflect a special contribution, although I appreciate that there may be an unknown number of settled cases in which a special contribution was agreed or accepted to be a factor. There are unlikely to have been many, if any, adjudicated cases below the level of the High Court, since it is only where there is substantial wealth that a special contribution claim can sensibly be advanced, as explained by the Court of Appeal in *Charman*, at paragraph 80.

131 The three reported cases are *Sorrell v Sorrell [2005] EWHC 17(Fam),[2006] 1 FLR 497*, decided in July 2005 (before *Miller*); *Charman* itself, in May 2007; and very recently *Cooper-Hohn v Hohn [2014] EWHC 4122 (Fam*) in which judgment was publicly handed down in December 2014. In *Charman* special contribution was conceded. The issue was as to the appropriate discount or adjustment to reflect it.

132 The rarity of reported cases does not in any way at all detract from the existence of the concept of special contribution, which is undoubted, nor in any way diminish the claim which the husband makes in the present case. It does, however, tend to reinforce the exceptional (in the sense of rare) nature of

successful such claims, and therefore the specialness which is required before such a claim can succeed.

133 In *Miller v Miller*, Lord Nicholls of Birkenhead said at paragraphs 67 and 68:

> "... Parties should not seek to promote a case of 'special contribution' unless the contribution is so marked that to disregard it would be inequitable. A good reason for departing from equality is not to be found in the minutiae of married life.
>
> 68. This approach provides the principled answered in those cases where the earnings of one party, usually the husband, have been altogether exceptional. The question is whether earnings of this character can be regarded as a "special contribution", and thus as a good reason for departing from equality of division. The answer is that exceptional earnings are to be regarded as a factor pointing away from equality of division when, but only when, it would be inequitable to proceed otherwise. The wholly exceptional nature of the earnings must be, to borrow a phrase more familiar in a different context, obvious and gross. Bodey J encapsulated this neatly when sitting as a judge in the Court of Appeal in *Lambert v Lambert* ... He described the characteristics or circumstances which would bring about a departure from equality:

"...those characteristics or circumstances clearly have to be of a wholly exceptional nature, such that it would be very obviously inconsistent with the objective of achieving fairness (i.e. it would create an unfair outcome) for them to be ignored."

134 Baroness Hale of Richmond said at paragraph 146:

"In my view, the question of contributions should be approached in much the same way as conduct ... It had already been made clear in *White v White* that domestic and financial contributions should be treated equally. Section 25 (2) (f) of the 1973 Act does not refer to the contributions which each has made to the parties' *accumulated wealth,* but to the contributions they have made (and will continue to make) to the *welfare of the family*.

Each should be seen as doing their best in their own sphere. Only if there is such a disparity in their respective contributions to the *welfare of the family* that it would be inequitable to disregard it should this be taken into account in determining their shares."

135 In *Charman* there was a single, reserved judgment of the court, by a court of, if I am permitted very respectfully to say so, exceptional experience in the field of matrimonial finance. They said at paragraph 79:

> "The statutory requirement in every case to consider the contributions which each party has made to the welfare of the family, as well as those which each is likely to make to it, would be inconsistent with a blanket rule that their past contributions to its welfare must be afforded equal weight. Nevertheless, the difficulty attendant upon a comparison of their different contributions and the danger of its infection by discrimination against the home-maker led the House in *Miller* heavily to circumscribe the situations in which it would be appropriate to find that one party had made a special contribution, in the sense of a contribution by one unmatched by the other, which, for the purpose of the sharing principle, should lead to departure from equality ..."

136 They said at paragraph 80:

> "The notion of a special contribution to the welfare of the family will not successfully have been purged of inherent gender discrimination unless it is accepted that such a contribution can, in principle, take a number of forms; that it can be non-financial as well as financial; and that it can thus be made by a party whose role has been exclusively that of a home-maker. Nevertheless in practice, and for a self-evident reason, the claim

to have made a special contribution seems so far to have arisen only in cases of substantial wealth generated by a party's success in business during the marriage. The self-evident reason is that in such cases there is substantial property over the distribution of which it is worthwhile to argue. In such cases can the amount of the wealth alone make the contribution special? Or must the focus always be upon the manner of its generation? In *Lambert* Thorpe L J said, at paragraph [52]:

> 'There may be cases where the product alone justifies a conclusion of a special contribution but absent some exceptional and individual quality in the generator of the fortune a case for special contribution must be hard to establish.'

In such cases, therefore, the court will no doubt have regard to the amount of the wealth; and in some cases, perhaps including the present, its amount will be so extraordinary as to make it easy for the party who generated it to claim an exceptional and individual quality which deserves special treatment. Often, however, he or she will need independently to establish such a quality, whether by genius in business or in some other field. Sometimes, by contrast, it will immediately be obvious that substantial wealth generated during the marriage is a windfall - the proceeds, for example, of an unanticipated sale of land for

development or of an embattled takeover of a party's ailing company - which is not the product of a special contribution."

137 They said at paragraph 88:

"Like this court in *Lambert*, we find ourselves unable to identify any figure as a guideline threshold for a special contribution of this character. It would, we consider, be dangerous for us to do so. However laden with qualification, the guideline might discourage a court from discerning special contribution in the generation of wealth below the threshold in circumstances, however rare, in which it should properly do so. The greater concern, however, is the obverse risk that it might encourage a court to discern special contribution in the generation of wealth above the threshold in circumstances in which it should not properly do so. While the law recognises the concept of a special contribution in the generation of wealth, there is no doubt that, following the decision of this court in *Lambert*, approved and developed in *Miller*, it keeps the concept in very narrow bounds. We would not wish a party's claim to have made a special contribution to succeed by reference to something interpreted as effectively a presumption deriving from our identification of a threshold figure."

138 *Sorrell* preceded *Miller* and *Charman*. Other subsequent authorities at first instance are, or should be, no more than an application of the jurisprudence established by the House of Lords and the Court of Appeal in *Miller* and *Charman* respectively.

139 In their written opening note on behalf of the wife in the present case, Mr Bishop and Mr Michael Bradley suggested, at paragraph 37, that in *Cooper-Hohn v Hohn* Roberts J had "re-calibrated the scale of wealth which will be necessary to establish a claim of special contribution." I completely reject that Roberts J either intended to do so or did do so. She was dealing with a case in which the generated wealth had been of the order of $6,000,000,000, although much of it had later been donated to charitable foundations. The facts and scale of *Cooper-Hohn* stand completely alone, and nothing that Roberts J said or decided in that case can impact at all on the present case. A successful claim to a special contribution does not require wealth remotely on the scale of that in *Cooper-Hohn*.

140 From the passages that I have quoted from *Miller* and *Charman*, I extract the following:

(i) The characteristics or circumstances which would result in a departure from equality have to be of a wholly exceptional nature

such that it would very obviously be inconsistent with the objective of achieving fairness for them to be ignored: per Bodey J in *Lambert* but quoted with obvious approbation by Lord Nicholls of Birkenhead in *Miller* at paragraph 68.

(ii) Exceptional earnings are to be regarded as a factor pointing away from equality of division when, but only when, it would be inequitable to proceed otherwise (Lord Nicholls of Birkenhead in *Miller* at paragraph 68).

(iii) Only if there is such a disparity in their respective contributions to the welfare of the family that it would be inequitable to disregard it should this be taken into account in determining their shares (Baroness Hale of Richmond, in *Miller* at paragraph 146).

(iv) It is extremely important to avoid discrimination against the home-maker (the Court of Appeal in *Charman* at paragraphs 79 and 80).

(v) A special contribution requires a contribution by one unmatched by the other (the Court of Appeal in *Charman* at paragraph 79).

(vi) The amount of the wealth alone may be so extraordinary as to make it easy for the party who generated it to claim an exceptional and individual quality which deserves special treatment. Often, however, he or she will need independently to establish such a quality, whether by genius in business or some other field (the Court of Appeal in *Charman* at paragraph 80). A windfall is not enough.

(vii) There is no identified threshold for such a claim to succeed (the Court of Appeal in *Charman* at paragraph 88).

141 Paragraph 80 of *Charman,* excerpted in paragraph (vi) above, is one of several authorities that employ the word "genius". It appears also in *Lambert*, and very recently in *Cooper-Hohn*, and in other authorities in which the court has debated whether the person claiming a special contribution possesses the quality of "genius." I personally find that a difficult, and perhaps unhelpful, word in this context. To my mind, the word "genius" tends to be over-used and is properly reserved for Leonardo Da Vinci, Mozart, Einstein, and others like them. It may lead, as it did in this case, to the rather crude question to (in this case) the husband: "You don't describe yourself as a genius, do you?" Not surprisingly, the husband, like any person with a modicum of modesty, was

rather nonplussed by the question. Oscar Wilde is famously said to have declared that he had nothing to declare but his genius. More modest, even if exceptionally talented, people may be slow to make such a claim.

142 What I understand is meant by the word "genius" in this context, and what is required for a claim to a special contribution to succeed, is some "exceptional and individual quality which deserves special treatment." See *Charman* at paragraph 80. But the fact that judges have used the word "genius" in this context does tend to underline how exceptional, individual and special the quality has to be.

143 It is clear from the above propositions and the outcome in other cases that hard work alone is not enough. Many people work extremely hard at every level of society and employment. Hard work alone lacks the necessary quality of exceptionality. Further, to attach special weight to hard work in employment risks undervaluing in a highly discriminatory way the hard work involved in running a home and rearing children.

144 It is clear also that a successful claim to a special contribution requires some exceptional and individual quality in the spouse concerned. Being in the right place at the right time, or benefiting from a period of boom is not enough. It may one day fall for consideration whether a very highly paid footballer, who

is very good at his job but may be no more skilful that past greats, such as Stanley Matthews or Bobby Charlton, makes a special contribution or is merely the lucky beneficiary of the colossal payments now made possible by the sale of television rights.

145 With these considerations in mind I now turn to the relevant facts of this case, which the husband describes in his own section 25 statement, dated 10th February 2015.

146 The first offer to him to join Lone Star arose because a former colleague of his had himself moved to Lone Star. The parties moved to Dallas and expected to live there permanently. The opportunity to work in Japan arose because his employers offered it to him. He did, however, grasp it. Once in Japan, he worked very hard and often very long hours, very late at night.

147 In Japan, the husband applied ground breaking methodologies which he had developed and applied to the distressed debt sector. He ran the Japanese office and generated huge returns, both for the investors in the business and for himself personally. The scale of the returns to investors is demonstrated by a spreadsheet at Bundle 3: G: page 488. In the period from 1998 - 2008, during which a range of indicators or indices show returns in Japan to have averaged from minus 5 per cent to, at best, about 6 per cent, the average annual return on

Lone Star funds invested in Japan was over 50 per cent. The total profit for investors exceeded $7,000,000,000. The total earnings for the husband personally exceeded $300,000,000. He built up the business in Japan from scratch. By the time he left Lone Star, in 2008, the number of employees in Japan had risen from zero to about 400, all managed by him. He was, undoubtedly, very successful and performed very well indeed at the job he was employed to do.

148 It is necessary, however, that the contribution be unmatched. In this regard it is important to take into account the contribution which the wife made, by agreeing to move to Japan, by actually moving and living there, and by bringing up the children there. She explains at some length how difficult she found it, living far from home in an unfamiliar society and culture, where she could not even speak the language, and at a time when modern means of communication such as Facetime did not exist.

149 The husband has said that if the wife had not agreed to go to Japan he would still have taken the job opportunity there and would have commuted back to his wife in Texas or California to the extent possible. He did say, however, that in those circumstances the parties would not have had a child as he would not have wanted to be away from his child. See his answer on Day 3, p.174 - 175, around lines 15 - 6.

150 It follows that the husband was only able to work in Japan and amass the wealth **and** have the children, whom he adores, because the wife made the contribution and personal sacrifice of moving to live in Japan. I reject Mr Howard's submission that they both made a social and cultural sacrifice by moving to Japan and that, accordingly, the actual financial contribution by the husband remains unmatched.

151 As must have been apparent frequently during the hearing from my many interventions and discussions about the concept of special contribution, in my attempt to tease out the principled basis of the concept of special contribution, I have not found this aspect of the case an easy one.

152 On considered reflection, however, I am not satisfied that the husband has established an unmatched special contribution of the kind and to the extent that the authorities require. I am not persuaded that his financial contribution was unmatched. For 20 years the wife was a good wife, a good home-maker and a good mother. It was only because of her willingness to move and live in Japan that the husband was able both to work there and amass the wealth, and also to enjoy a home and family life, and the procreation of his adored children.

153 Further, I am not persuaded that the husband displayed the exceptional and individual quality that the authorities require. He was very good at his job. He worked very hard indeed. But he did not create Lone Star. He played no part in attracting the funds from investors, which were vital to the whole enterprise. His role in the Japanese sector of the business was very important, but it was not unique, and there is, indeed, no evidence that it could not have been performed by another.

154 There was an element of being in the right place at the right time, in which the particular business of Lone Star in Japan could flourish precisely because of the depressed state of the Japanese economy.

155 Whilst these cases should not be decided by comparing one with another, the role and achievements of the husband in this case were, frankly, on a different scale from those of Sir Martin Sorrell, as described by Bennett J at paragraphs 112 and 114 of his judgment in *Sorrell v Sorrell [2005] EWHC 1717 (Fam),[2006] 1 FLR 497.*

156 Although the figures are large, I do not consider that the contributions of the husband in this case can be described as of a wholly exceptional nature, nor that it would be "very obviously" inconsistent with fairness for them to be ignored. Indeed, it would, in my view, be unjustifiably gender discriminatory

to make an unequal award. This was a marriage of two strong and equal partners over 20 years. They each contributed in a range of differing, but all of them important, ways to a marriage and relationship which enriched them both, both financially and emotionally, as parents of their children and partners to each other.

157 I thus do not reduce the amount which would otherwise be payable to the wife so as to reflect the claimed special contribution by the husband based upon his achievements at Lone Star and the wealth he amassed.

158 Mr Howard further suggested that there was an extra and unmatched contribution by the husband because the children have primarily resided with him rather than with their mother during the last two years, when not away boarding at school. In this connection some reliance is placed upon the fact that soon after the separation the wife went on a long and lavish foreign trip with Mr H. There was a period when the children, and in particular the daughter, were much affected by the breakdown of their parents' marriage and their mother's affair, and had a reluctance to spend time with her. Happily, this damage is now healing, and there is no reason to suppose that once these dreadful proceedings have been concluded, and the wife has received her due and is able to rebuild a secure home life for the children, she will not play an equal part with the father in their future upbringing and care.

159 These are the sorts of sad minutiae of family breakdown which should not impact on overall outcome and which are dwarfed by the history of the preceding 20 years.

160 In my view, fairness and an overall appraisal of the section 25 factors requires, in this case, an equal division of the assets and the final outcome must achieve that effect.

The properties

161 The wife very strongly desires to receive one of the properties. She would prefer the Aspen house but says that if the husband digs in over that, as he does, then she would accept the Kensington house.

162 At paragraph 71 (a) of their written opening note, Mr Bishop and Mr Bradley refer to some observations by Coleridge J in *B v B [2013] EWHC 1232 (Fam*) to the effect, they said, that ordinarily where a family have two homes it would be fair for the parties to retain one each.

163 Examination of the full transcript of that case (which is publicly available on the Bailii website) reveals that the position was actually rather more complex.

The parties in that case owned, altogether, five properties. The wife was to keep by far the most valuable, the matrimonial home in London. They were arguing as to who should have the castle in Scotland. One (but only one) of the reasons given by Coleridge J for awarding the castle to the husband was that the wife would be keeping the London home, and that "on the basis that it is usually a fair approach for each party to a marriage to depart with a significant item of matrimonial hardware of their choice" the husband should have the next pick. At all material times the wife had remained in occupation of the London home and it was the husband who was using the castle.

164 The position of the husband in the present case is that if the wife must have one of the homes, then it should indeed be the Kensington house, but he resists even that. In my view, the situation in this case is very different from that adjudicated upon by Coleridge J in *B v B*, and indeed is not a "usual" situation.

165 The assets in the present case dwarf those in *B v B*, in which the net non-property assets were about £7,400,000. Whether she receives either property or not, the wife in the present case will soon be possessed of a very large capital sum, out of which she can, if she chooses, buy a no less valuable house in Kensington, or a no less valuable holiday home in Aspen, and still have a considerable investment portfolio. She could, alternatively, buy fine

properties in both London and Aspen, although not probably to the full aggregate value of both the current ones.

166 Whether she was excluded or not, the fact is that it is the husband, not the wife, who has used and maintained the Aspen property since the separation. I can see no principled basis upon which to award it to her in preference or priority to him.

167 Similarly, the wife has not, in fact, lived at all in the Kensington house during the two years since separation. She says that she was told to leave, but she wished to set up home, as she almost immediately did, with Mr H. It would have been deeply and understandably offensive to the husband if, in 2013, the wife had asserted a claim, at that stage, to live in the family home with Mr H. It would also have been deeply upsetting to the children, whose home it also was, and is, and who were, as I have said, much affected by the breakdown and the apparent reason for it, namely the affair with Mr H. For a further two years the house has continued to be the home of the husband and the home to which the children return when not at boarding school, or in Aspen, or on other luxury holidays abroad. If that house is now transferred to the wife, she would, very understandably from her point of view, wish to install Mr H, with whom she is now living in a settled relationship.

168 At this point I have to give first consideration to the welfare of the children. It is not at all clear how they would react to their father now being "excluded" from the home in which he, and they, have lived for the past six to seven years, and to their mother and Mr H moving in. Again, I cannot see in this particular case, which is heavily distinguishable from *B v B*, any principled basis for saying that the wife should now have the Kensington house in preference or priority to the husband, even if he also keeps the Aspen house.

169 I repeat that within about four to six weeks the wife will be possessed of ample capital with which to buy a comparable house if she wishes.

170 I am not willing, therefore, to order a specific transfer of either property to the wife as part of her award. I stress that the parties are, of course, completely free to agree that she should have one of the properties, and to agree the amount of the cash adjustment to the lump sum award.

The works of art

171 I understand it to be now agreed in principle that these should be divided, although there is still a dispute as to who should have which items, or at any rate a dispute as to some of them. The works of art must be stripped out of the asset schedule altogether. In default of other, more sensible negotiated

agreement (which I strongly encourage) the works of art must be divided by the parties making alternate choices, using the Christie's inventory and valuations. The first to choose shall be decided by the toss of a coin. There must be an overall equal division by value. If, at the end of that process, there is an unequal division by value, there must be a balancing cash adjustment.

The horses

172 I understand that it is agreed that the horses will all be transferred to the wife who must, of course, give credit for their agreed value.

Outcome

173 Even since the close of submissions on Tuesday I have received yet more emails and schedules from counsel on both sides, which appear to indicate that even now there is a dispute as to the correct treatment of some of the figures in the asset schedule, quite independent from the known issue with regard to discounts. I propose, therefore, to conclude this judgment in a relatively generalised way, leaving the parties now to perform the calculation and draft an appropriate order.

174 In this case there must be an equal division, by value, of all the assets which, so far as I am aware, are all listed on the existing asset schedule.

175 The art must be stripped out and evenly divided by value, as I have described. The wife must receive the horses. The relatively small investments owned by the wife, but currently possessed by the husband, must be made available to her and, of course, taken into account. The overall net worth must be calculated, using the husband's discounted figures, and the balancing figure calculated which accords to the wife, overall, one half of all the assets. That figure must be paid by the husband to the wife as a lump sum.

176 The first $60,000,000 must be paid within 28 days of today, Friday, 6th March, 2015. The balance must be paid within 90 days of today, as the husband has offered. [Note. Following argument during the subsequent working out of the order this period of 90 days (but not the 28 days for the first $60 million) was, by agreement, increased.]

177 The order must record and make quite clear the net wealth, after discounts, upon which it is based. The order must make clear that there shall be a further lump sum payable to the wife equal to 50 per cent of the amount by which the net wealth of the husband on 31st December 2014 (the agreed valuation date) as appropriately assessed exceeds the figure for his discounted net wealth used

in the calculation of the lump sum payable now. The order must also make clear that, of course, the awarded lump sum may, by agreement between the parties, be satisfied in whole or in part by the transfer of assets and credit being given in agreed amounts for the assets so transferred.

178 The existing order for maintenance pending suit must continue to be paid, in full, until the date upon which the wife has received, in full, the whole of the lump sum calculated on the discounted figures (i.e. within 90 days of today). The first tranche of $60,000,000 may be required by the wife for the purchase of her home, and the husband must continue to provide her with income until payment in full. The sooner he does pay, in full, the sooner the maintenance pending suit will end.

179 I wish to stress that the important decisions in principle have now been made. The feuding and position taking must now stop. I would expect solicitors and counsel of the repute in this case to bend every endeavour to enabling these parties now to compromise and agree, and to bring this terrible conflict to an end.

Link to the agreements:

AGREEMENT BETWEEN SPOUSES

EACH PARTY TO THIS AGREEMENT UNDERSTANDS THAT BY SIGNING THIS DOCUMENT HE OR SHE MAY BE PERMANENTLY SURRENDERING CLAIMS HE OR SHE WOULD OTHERWISE HAVE TO INCOME OR PROPERTY DERIVED FROM SEPARATE PROPERTY OF HIS OR HER SPOUSE AND TO OTHER PROPERTIES ACQUIRED BY HIS OR HER SPOUSE.

WHEREAS, WILLIAM R. WORK (the "Husband") and MANDY C. GRAY (the "Wife"), both previously of Dallas, Texas, and now residing in Tokyo, Japan, were married on March 24, 1995;

WHEREAS, Husband and Wife desire to establish their respective rights in and to those certain properties described in Schedule "I" attached hereto and incorporated herein by reference for all purposes and, in connection therewith, to partition any of such properties which may be deemed to be community property and to give certain of such properties to each other;

WHEREAS, following the execution of this Agreement, Husband will own, as his separate property and estate, all of those certain properties described in Schedule "II" attached hereto and incorporated herein by reference for all purposes;

WHEREAS, following the execution of this Agreement, Wife will own, as her separate property and estate, all of those certain properties described in Schedule "III" attached hereto and incorporated herein by reference for all purposes;

WHEREAS, following the execution of this Agreement, Husband will be solely responsible for the liabilities described in Schedule "IV" attached hereto and incorporated herein by reference for all purposes;

WHEREAS, Husband desires that Wife acknowledge the status of those certain properties described in Schedule "II" as the separate property and estate of Husband, and Wife desires that Husband acknowledge the status of those certain properties described in Schedule "III" as the separate property and estate of Wife;

WHEREAS, it is the intention of each party to disclaim, release, relinquish, renounce, and waive any and all of the rights, claims, and demands of every kind whatsoever that may now exist or may hereafter arise in favor of such party or that such party could ever assert against the other party, with respect to all of the separate property of the other party as described in one of said Schedules, or any part thereof, and any monies, properties, or other things of value into which any of said separate property may be changed, exchanged, invested, or reinvested;

WHEREAS, Husband and Wife desire that all of the income or property arising from the separate property of either of them and all increases in value in such separate property shall be and remain separate property and become a part of the separate estate from which such property, income, or increase arose, and furthermore, that any income received or receivable by either of them consisting of salaries, commissions, bonuses, or other compensation for services performed by either of them shall be the separate property and estate of the party performing such services; and

WHEREAS, Husband and Wife desire that neither will attempt to assert community property rights or reimbursement rights due to the time, toil, efforts, skills, or energies of either party (or the agent of either party) expended in managing his or her separate property.

NOW, THEREFORE, for and in consideration of the premises and the mutual benefits to accrue to each party hereto, and other good and valuable consideration, the receipt and sufficiency of which considerations are hereby confirmed and acknowledged, and pursuant to, among other things, Sections 4.101 through 4.106 of the TEXAS FAMILY CODE and Article 16, Section 15, of the Constitution of the State of Texas, Husband and Wife hereby agree as follows:

I.

Husband and Wife acknowledge and agree that those certain properties listed on Schedule "I" are owned, in whole or in part, by either or both of them, as their respective separate property or their community property.

Husband and Wife hereby partition any and all of those certain properties on Schedule "I" that are community property into two equal shares, and one such share is hereby set apart to Husband, who shall own such share as his separate property and estate, and the other such share is hereby set apart to Wife, who shall own such share as her separate property and estate.

Wife hereby agrees to give to Husband, and by these presents does hereby give to Husband, any interest she may have, of whatever sort, either prior to this Agreement or as a result of the above partition, in those certain properties listed on Schedule "II" so that hereafter all of those certain properties listed on Schedule "II" shall be the sole and separate property of Husband; and Wife acknowledges and agrees that hereafter she shall have no right, title, or interest in any of those certain properties listed on Schedule "II."

Husband hereby agrees to give to Wife, and by these presents does hereby give to Wife, any interest he may have, of whatever sort, either prior to this Agreement or as a result of the above partition, in those certain properties and funds listed on Schedule "III" so that hereafter all of

those certain properties listed on Schedule "III" shall be the sole and separate property of Wife; and Husband acknowledges and agrees that hereafter he shall have no right, title, or interest in any of those certain properties listed on Schedule "III."

All liabilities listed on Schedule "IV" are and shall continue hereafter to be the sole and separate liability of Husband, and Husband acknowledges and agrees that Wife has no obligation whatsoever with respect to any of such liabilities listed on Schedule "IV," and to the extent that Wife may have had any obligation with respect to any of such liabilities, Husband hereby makes a gift to Wife by assuming such liabilities and waiving and releasing any obligation that Wife may have had with respect to any of such liabilities; and further, Husband hereby agrees to indemnify and hold harmless Wife with respect to any such liabilities.

II

Husband and Wife acknowledge and agree that all income or property arising from the separate property of either of them shall be and remain separate property and become a part of the separate estate from which such property or income arose. Husband and Wife further acknowledge and agree that any gift of separate property by one of them to or for the benefit of the other of them shall include the income arising from such separate property, and such income shall continue to be of the same character as the separate property from which it arose. Husband and Wife further agree that any increases in value of a party's separate property shall be and remain that party's separate property and estate. Husband and Wife further acknowledge and agree that any income received or receivable by either of them consisting of salaries, commissions, bonuses, or other compensation for services performed by either of them shall be the separate property and estate of the party performing such services.

Husband and Wife further acknowledge and agree that neither will attempt to assert community property rights or reimbursement rights due to the time, toil, efforts, skills, or energies of either party (or the agent of either party) expended in managing his or her separate property. Accordingly, each party hereby waives application of the so-called "community efforts doctrine."

III.

It is specifically agreed that in the event of termination of the marriage of the parties by divorce or death, Husband will have no right, title, interest, or claim in, to, or with respect to any of the separate properties then owned by Wife, except, in the event the marriage terminates on account of the death of one of the parties, as provided by Wife's Will or by other valid testamentary disposition; and Wife will have no right, title, interest, or claim in, to, or with respect to any of the separate properties then owned by Husband, except, in the event the marriage terminates on account of the death of one of the parties, as provided by Husband's Will or by other valid testamentary disposition.

IV.

If any term or provision of this Agreement is held to be unenforceable as to any person or under any circumstance, the remaining terms and provisions hereof and the validity, application, and enforceability of such particular term or provision to any other person or under any other circumstance shall in nowise be affected or impaired thereby; and each term and provision hereto shall be valid and shall be applied and enforced to the fullest extent permitted by law.

V.

The parties agree that this Agreement may be enforced by suit in law or equity by either of the parties, their heirs, legal representatives, or assigns.

THE PARTIES AGREE THAT THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS.

This Agreement shall inure to the benefit of, and shall be binding on the heirs, legal representatives, and assigns of, the parties hereto.

VI.

Each party shall take any and all steps to cooperate fully in executing, acknowledging, and delivering to the other party or to that party's personal representative any instruments necessary or expedient to implement the terms and intent of this Agreement. Further, if and as necessary, the fax (facsimilated) signatures of either party shall, for all purposes in interpreting, implementing, and enforcing this Agreement, be treated as original signatures, and each party agrees to cooperate fully in re-signing this Agreement and any other instrument necessary or expedient to implement the terms and intent of this Agreement in as expedient a manner as possible under the circumstances.

VII.

Each party to this Agreement acknowledges and declares that the Agreement is fair and is not unconscionable at the time executed and that he or she, respectively:

(1) is fully and completely informed as to the facts relating to the subject matter of this Agreement and as to the rights and liabilities of both parties;

(2) enters into this Agreement voluntarily, Husband having been advised by Rob D. Harrison and Santo Bisignano, Jr. of Bisignano & Harrison, L.L.P. and Wife having been advised by Henry D. DeBerry III and Ronald W. Kesterson of Baker Botts L.L.P., and has been given the opportunity to seek whatever individual advice and counsel from other lawyers he or she desires;

(3) has been provided a fair and reasonable disclosure of the property and financial obligations of the other party, has been provided satisfactory access to all information concerning the nature and extent of all assets and liabilities of the other

party and does hereby, voluntarily and expressly, waive any right to disclosure of the property and financial obligations of the other party beyond the disclosure provided;

(4) has given careful and mature thought to the making of this Agreement;

(5) has carefully read each provision of this Agreement; and

(6) fully and completely understands each provision of this Agreement, both as to subject matter and legal effect.

Each party to this Agreement further expressly declares that he or she has executed this Agreement voluntarily and that his or her execution of this Agreement was not procured by fraud, duress, or overreaching in any way.

VIII.

This Agreement may be amended, modified, or revoked only by a written and acknowledged instrument signed by both parties hereto, and the parties expressly reserve their right to amend, modify, or revoke this Agreement in form or in substance by their mutual agreement at any time during their marriage, without the joinder or consent of any third party.

EXECUTED in multiple counterparts on the dates set forth in the respective acknowledgments of the parties, to be effective, however, as of the 25th day of October, 2000.

MANDY C. GRAY

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of October, 2000, by MANDY C. GRAY.

Notary Public, State of Texas

WILLIAM R. WORK

JAPAN
CITY OF TOKYO
EMBASSY OF THE UNITED STATES OF AMERICA } ss:

This instrument was acknowledged before me on the OCT 2 6 2000 day of October, 2000, by WILLIAM R. WORK.

Robert E. Tynes
Notary Public, American Consul General

HOU01:597743

Schedule I

	Amount	As of
Cash (1)	160,000	10/11/2000
Hudson/LS 401K	97,035	09/30/2000
Schwab IRA account	46,980	10/11/2000
California House (2)	300,000	09/30/2000
Hudco Partners I	125,500	09/30/2000
Hudco Partners II	250,000	09/30/2000
LS Partners I	83,000	09/30/2000
LS Partners II	2,500,000	09/30/2000
LS Partners III	1,850,000	09/30/2000
Hudco Partners III (3)	-100	09/30/2000
Hudson Advisors Profit Participation	40,000	09/30/2000

(1) Chase Bank of Texas
Checking Account
#04600013458
Saving Account
#4600022335

(2) 10227 Ivey Lane, Nevada City, CA 95959

(3) Investment in this entity may be offered to Randy Work in the future. As of the date hereof, Randy Work has not yet been offered an investment in this partnership.

Schedule II

	Amount	As of
Cash (1)	160,000	10/11/2000
Hudson/LS 401K	87,035	09/30/2000
Hudco Partners I	125,500	09/30/2000
Hudco Partners II	250,000	09/30/2000
LS Partners I	83,000	09/30/2000
LS Partners II	2,500,000	09/30/2000
LS Partners III	1,850,000	09/30/2000
Hudco Partners III (2)	100	09/30/2000
Hudson Advisors Profit Participation	40,000	09/30/2000

(1) Chase Bank of Texas
Checking Account
#04600013458
Saving Account
#4600022335

(2) Investment in this entity may be offered to Randy Work in the future. As of the date hereof, Randy Work has not yet been offered an investment in this partnership.

Schedule III

	Amount	As of
Schwab IRA account	46,880	10/11/2000
California House (1)	300,000	09/30/2000

(1) 10227 Ivey Lane, Nevada City, CA. 95959

Schedule IV

	Amount	As of
Washington Mutual Mortage	190,000	09/30/2000
Hudco Partners Debt	59,072	09/30/2000
Hudco Partners II Debt	70,905	09/30/2000
1999 Income Taxes Payable	140,000	09/30/2000

ADDENDUM AGREEMENT BETWEEN SPOUSES

EACH PARTY TO THIS AGREEMENT UNDERSTANDS THAT BY SIGNING THIS DOCUMENT HE OR SHE MAY BE PERMANENTLY SURRENDERING CLAIMS HE OR SHE WOULD OTHERWISE HAVE TO INCOME OR PROPERTY DERIVED FROM SEPARATE PROPERTY OF HIS OR HER SPOUSE AND TO OTHER PROPERTIES ACQUIRED BY HIS OR HER SPOUSE.

WHEREAS, WILLIAM R. WORK (the "Husband") and MANDY C. GRAY (the "Wife") have contemporaneously herewith entered into the AGREEMENT BETWEEN SPOUSES in which they have agreed to partition any community property they may own and to give certain properties to each other so as to establish their respective ownership in and to all of their respective properties;

WHEREAS, Husband and Wife desire to enter into this ADDENDUM AGREEMENT BETWEEN SPOUSES to establish and define certain of their respective rights and obligations during their marriage and upon the dissolution of their marriage by divorce or Husband's death; and this Addendum, along with the AGREEMENT BETWEEN SPOUSES, shall be construed as one agreement but shall be independent and several in their enforceability;

WHEREAS, neither Husband nor Wife is contemplating divorce and this Addendum is not made because of any thought on the part of either party that such a divorce is likely to occur or is within either party's current contemplation or intention; and

WHEREAS, Husband executes this agreement as additional consideration to Wife's execution of the AGREEMENT BETWEEN SPOUSES.

NOW, THEREFORE, for and in consideration of the premises and the mutual benefits to accrue to each party hereto, and other good and valuable consideration, the receipt and sufficiency of which considerations are hereby confirmed and acknowledged, Husband and Wife hereby agree as follows:

I.

Upon the dissolution of the marriage by divorce, Husband agrees to pay to Wife an amount, payable in cash in U.S. dollars, without interest, as determined below in this Addendum.

The "Initial Sum Payable to Wife," as determined below in this Addendum, shall be paid in three (3) equal annual installments. The first installment of the Initial Sum Payable to Wife shall be paid on the date of the entry of the decree of divorce, and each subsequent installment of the Initial Sum Payable to Wife shall be paid on the anniversary of such date until paid in full. If Wife is not living on the anniversary date of such subsequent installment, then such payment shall be made to the executor(s) or administrator(s) of Wife's estate.

The "Additional Sum Payable to Wife," as determined below in this Addendum, shall be paid in six (6) equal annual installments. The first installment of the Additional Sum Payable to Wife shall be paid on the date of the entry of the decree of divorce, and each subsequent installment of the Additional Sum Payable to Wife shall be paid on the anniversary of such date until paid in full. If Wife is not living on the anniversary date of such subsequent installment, then such payment shall be made to the executor(s) or administrator(s) of Wife's estate.

The Initial Sum Payable to Wife plus the Additional Sum Payable to Wife shall be referred to below in this Addendum as the "Total Sum Payable to Wife."

The Total Sum Payable to Wife shall be in lieu of any other division of the property of Husband and Wife upon their divorce and of any obligation of Husband to maintain, support, pay alimony to, or make any other payment to Wife; and Wife agrees that by accepting the Total Sum Payable to Wife she shall not be entitled to any of Husband's property, including any and all of the property divided by the AGREEMENT BETWEEN SPOUSES, or to any maintenance, support, alimony, or payment of any kind from Husband and that the Total Sum Payable to Wife shall be in full satisfaction of Wife's marital rights, including any rights that she may have to any marital property.

The parties acknowledge that it is their mutual intention that the Total Sum Payable to Wife shall be received by Wife undiminished by United States or foreign tax, and they agree to use their best efforts to structure the Total Sum Payable to Wife so that such intended result is achieved; provided, however, that Husband shall in no event be obligated by this Addendum to pay an amount, on an after-tax basis to Husband, that exceeds the Total Sum Payable to Wife.

II.

The Initial Sum Payable to Wife shall be equal to fifty percent (50%) of Husband's net after-tax net worth up to Ten Million Dollars ($10,000,000) of such net after-tax net worth; thus, in no event shall the Initial Sum Payable to Wife exceed Five Million Dollars ($5,000,000).

The Additional Sum Payable to Wife shall be equal to forty percent (40%) of Husband's net after-tax net worth in excess of Ten Million Dollars ($10,000,000) of such net after-tax worth; there is no cap on the maximum amount of the Additional Sum Payable to Wife.

Wife hereby acknowledges and agrees that Husband's net after-tax net worth as of the applicable valuation date may be greater than or less than Husband's net after-tax net worth as of the effective date of this Addendum.

III.

For purposes of this Addendum, the following terms shall have the following meanings:

(1) "Pre-tax net worth" shall mean the total value of all of the property owned by Husband on the applicable valuation date as determined by using the valuation principles applicable to gifts of property under Chapter 12 of the Internal Revenue Code of the United States, reduced by indebtedness of Husband and joint indebtedness of Husband and Wife in respect of money borrowed, purchases made, and liquidated claims on the applicable valuation date (excluding, however, any contingent liabilities on the applicable valuation date (*e.g.*, guaranties)).

(2) "Net after-tax net worth" shall mean Husband's pre-tax net worth reduced by all applicable United States and foreign federal, state, and local income, wealth, value added, and similar taxes (ordinary, capital gain, or otherwise) that would be due and payable if Husband were to liquidate to cash all of his pre-tax net worth on the applicable valuation date.

(3) "Applicable valuation date" shall mean the date on which an action is filed for divorce by either party, which divorce proceeding ultimately concludes in the entry of a decree of divorce.

IV.

For purposes of determining the Total Sum Payable to Wife, Husband shall, within one hundred and twenty (120) days after the applicable valuation date, provide to Wife good faith estimates of his pre-tax net worth and net after-tax net worth on the applicable valuation date. Wife may accept Husband's good faith estimate or may submit her own estimate of Husband's pre-tax net worth and net after-tax net worth on the applicable valuation date. In the event that Husband and Wife are unable to agree upon Husband's pre-tax net worth or net after-tax net worth, the determination of these amounts shall be made by a valuation specialist with the accounting firm of Ernst & Young, PriceWaterhouseCoopers, KPMG Peat Marwick, Deloitte & Touche, or Arthur Andersen, and such determination shall be binding upon the parties. If Husband and Wife are unable to agree as to the valuation specialist to be engaged, the then-serving President of the American Arbitration Association shall select the valuation specialist. The parties shall each pay one-half of the fees of the valuation specialist, and each party will otherwise bear his or her own expenses related to appraisals, attorneys' fees, or other related expenses. Notwithstanding the foregoing, if the Total Sum Payable to Wife, as determined by the valuation specialist, exceeds by more than five percent (5%) the Total Sum Payable to Wife based on Husband's good-faith estimates, Husband shall pay for the reasonable costs of Wife's appraisers, attorneys' fees, and other expenses related to the determination of the Total Sum Payable to Wife, as determined by the valuation specialist.

V.

Notwithstanding any other provision of this Addendum, Wife is under no obligation to accept the Total Sum Payable to Wife as settlement of Husband's obligations upon divorce and is free to seek from a court with jurisdiction over any divorce proceeding between the parties (the

"Divorce Court") maintenance, support, alimony, a property settlement, or any other allowable recovery from Husband or from property owned by Husband ("Alternative Relief") in lieu of the Total Sum Payable to Wife; provided, however, if Wife seeks Alternative Relief from any court, Wife shall be deemed to have forfeited and to have relinquished her right to the Total Sum Payable to Wife, and, so that there will be no ambiguity or uncertainty as to whether or not Wife is seeking Alternative Relief, Wife agrees to file with the Divorce Court either an express affirmative election to accept the Total Sum Payable to Wife in lieu of any Alternative Relief or an express affirmative election to seek Alternative Relief, which shall be determinative as between the parties provided the final relief granted by the Divorce Court is consistent with the Wife's election. Wife's failure to file such election with the Divorce Court within thirty (30) days ***after*** the later of (i) a final determination of Husband's pre-tax net worth and net after-tax net worth on the applicable valuation date, and (ii) Wife's receipt of Husband's written request to Wife for such an election to be filed with the Divorce Court, shall be deemed to be an acceptance by Wife of the Total Sum Payable to Wife. If Wife elects to accept (or is deemed to have accepted) the Total Sum Payable to Wife as settlement of Husband's obligations upon divorce, the parties agree that they will take the necessary steps to cause the final decree of divorce to incorporate the terms and conditions of this Addendum.

VI.

Upon the dissolution of the marriage by Husband's death, unless Husband and Wife agree in writing to the contrary, Husband agrees to provide, by appropriate testamentary and nontestamentary means, that Wife shall be entitled to no less than a legal life estate or functional equivalent (*e.g.*, a QTIP Trust) in all properties owned by Husband at Husband's death, with the further provisos that, to the extent a legal life estate or functional equivalent is utilized by Husband:

(a) Wife shall be entitled to receive, at least quarterly after Husband's death, all ordinary income (*e.g.*, cash dividends and interest) in respect of those properties, and (b) Wife shall have the power to direct that nonproductive properties be invested in a productive manner.

If, at Husband's death, Husband has complied with the provisions in the preceding paragraph, and if Wife formally challenges those provisions in a court with jurisdiction over Husband's estate proceedings, then Wife's entitlement to an interest in any of Husband's properties shall be forfeited and Wife shall be treated as having predeceased Husband.

VII.

Husband agrees to pay from his properties all expenses whenever incurred during his marriage to Wife, whether incurred by Husband or Wife. Further, Husband agrees that, within twenty-four (24) months from the effective date of this Addendum, Husband will give to Wife, or to an account or accounts designated by Wife (as to which Wife shall have sole access and control), from Husband's properties, the total amount, payable in cash in United States Dollars, of One Hundred Thousand Dollars ($100,000).

VIII.

If any term or provision of this Addendum is held to be unenforceable as to any person or under any circumstance, the remaining terms and provisions hereof and the validity, application, and enforceability of such particular term or provision to any other person or under any other circumstance shall in nowise be affected or impaired thereby, and each term and provision hereto shall be valid and shall be applied and enforced to the fullest extent permitted by law.

IX.

The parties agree that any dispute, claim, or controversy arising out of or in connection with this Addendum that cannot be amicably resolved by the parties shall be resolved by arbitration, and the parties hereby waive and relinquish their rights to have any such dispute, claim, or controversy determined by a court or in any other manner than arbitration. Arbitration shall be held in a location chosen by Wife, in accordance with the Multiple Rules of Conciliation and Arbitration of the International Chamber of Commerce by three arbitrators, one of whom shall be selected by Husband, one of whom shall be selected by Wife, and one of whom shall be selected by the two arbitrators appointed by the parties; provided that, failing any such appointment being timely made within ten (10) calendar days of the demand for arbitration, or the selection of the arbitrators, in the case of the appointment of the third arbitrator, the ICC Court of Arbitration shall make any such appointment. The Arbitral Tribunal shall decide the matter and render a decision within thirty (30) calendar days thereafter. The parties hereto agree to cooperate in such expedited procedure and to perform all necessary acts to ensure adherence to this schedule. The Arbitral Tribunal shall decide, by majority vote, the dispute, controversy, or claim in accordance with the governing law specified herein. The decision of the arbitrators shall be in writing and shall set forth the basis therefor. The decision of a majority of the arbitrators shall be final and binding upon the parties hereto, and all such awards may be enforced and executed upon in any court having jurisdiction over the party against whom enforcement of such award is sought. Husband and Wife shall divide equally the administrative charges, arbitrators' fees and related expenses of arbitration, but each party shall pay its own legal fees incurred in connection with any such arbitration. All arbitration awards hereunder shall be rendered and paid in United States Dollars.

THE PARTIES AGREE THAT THIS ADDENDUM SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF TEXAS.

This Addendum shall inure to the benefit of, and shall be binding on the heirs, legal representatives, and assigns of, the parties hereto.

X.

Each party shall take any and all steps to cooperate fully in executing, acknowledging, and delivering to the other party or to that party's personal representative any instruments necessary or expedient to implement the terms and intent of this Addendum. Further, if and as necessary, the fax (facsimilated) signatures of either party shall, for all purposes in interpreting, implementing, and enforcing this Addendum, be treated as original signatures, and each party agrees to cooperate fully in re-signing this Addendum and any other instrument necessary or expedient to implement the terms and intent of this Addendum in as expedient a manner as possible under the circumstances.

XI.

Each party to this Addendum acknowledges and declares that this Addendum is fair and is not unconscionable at the time executed and that he or she, respectively:

(1) is fully and completely informed as to the facts relating to the subject matter of this Addendum and as to the rights and liabilities of both parties;

(2) enters into this Addendum voluntarily, Husband having been advised by Bob D. Harrison and Santo Bisignano, Jr. of Bisignano & Harrison, L.L.P. and Wife having been advised by Henry D. DeBerry, III and Ronald W. Kesterson of Baker Botts L.L.P., and has been given the opportunity to seek whatever individual advice and counsel from other lawyers he or she desires;

(3) has been provided a fair and reasonable disclosure of the property and financial obligations of the other party, has been provided satisfactory access to all information concerning the nature and extent of all assets and liabilities of the other

party and does hereby, voluntarily and expressly, waive any right to disclosure of the property and financial obligations of the other party beyond the disclosure provided;

(4) has given careful and mature thought to the making of this Addendum;

(5) has carefully read each provision of this Addendum; and

(6) fully and completely understands each provision of this Addendum, both as to subject matter and legal effect.

Each party to this Addendum further expressly declares that he or she has executed this Addendum voluntarily and that his or her execution of this Addendum was not procured by fraud, duress, or overreaching in any way.

XII.

This Addendum may be amended, modified, or revoked only by a written and acknowledged instrument signed by both parties hereto, and the parties expressly reserve their right to amend, modify, or revoke this Addendum in form or in substance by their mutual agreement at any time during their marriage, without the joinder or consent of any third party.

EXECUTED in multiple counterparts on the dates set forth in the respective acknowledgments of the parties, to be effective, however, as of the 25th day of October, 2000.

MANDY C. GRAY

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 25th day of October, 2000, by MANDY C. GRAY.

Helaine O. Newman
Notary Public, State of Texas

HELAINE O. NEWMAN
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MAY 19, 2003

WILLIAM R. WORK

This instrument was acknowledged before me on the _____ day of October, 2000, by WILLIAM R. WORK.

Notary Public, _____

MANDY C. GRAY

STATE OF TEXAS §
§
COUNTY OF DALLAS §

This instrument was acknowledged before me on the _____ day of October, 2000, by MANDY C. GRAY.

Notary Public, State of Texas

WILLIAM R. WORK

JAPAN
CITY OF TOKYO
EMBASSY OF THE UNITED STATES OF AMERICA } ss:

This instrument was acknowledged before me on the OCT 2 6 2000 day of October, 2000, by WILLIAM R. WORK.

Robert E. Tynes
~~Notary Public~~ American Consul General

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