

Business 'divorce' can uncover host of trouble

By Gary A. Witte
CONTRIBUTING WRITER

Divorces are breakups that require lawyers. When it's a business breakup, one can also add accountants to the mix.

IAG Forensics Managing Partner Laurie Dyke said every business "divorce" is different, but fraud and hard feelings can be common when company partners call it quits. Former friends and acquaintances can make for bitter antagonists.

"It's a painful process for people to go through," she said. "It's hard for them to split up."

Jonathan Hawkins, an attorney who focuses primarily on such cases with **Foltz Martin Hudson & Knapp LLC**, said when one partner accuses the other of misdeeds, it inevitably leads to lawsuits.

"That's when it gets really complicated, expensive and time-consuming," he said.

The prospect of lawsuits, along with a high value of the businesses involved and suspicions of wrongdoing, typically results in the hiring of a forensic auditor.

Hawkins said an example could involve a company suffering a sudden dip in value only to have a partner offer to buy the others out. Company leaders would want to call in a forensic accountant to see if the downturn was real or manufactured and determine the company's actual value.

Dyke said the first step for a forensic auditor is to get the company's accounting

file in its native format. This would be followed by acquiring the tax returns, bank records with cancelled checks and credit card statements.

Then auditors get documentation of any amounts paid to the owner or paid on their behalf, followed by information about informal benefits, including deferred compensation or personal expenses. The resulting trail made by the auditor re-creates — and helps analyze — the flow of funds in the company, Dyke said.

She described it as a financial puzzle that usually winds up short of some pieces.



Hawkins
Foltz Martin Hudson
& Knapp LLC

"A lot of it depends on the facts and circumstances," Dyke said. "We never get 100 percent of what we're looking for. We get as close as we can."

The root causes of problems can sometimes be detected even before trouble starts.

Dyke said many issues result when one of the partners is not interested or just doesn't take part in the company's finances.

It never makes sense for one partner to simply hand the checkbook to the other or an employee; that level of trust creates opportunities for misunderstandings and misappropriations, she said. Partners should have good accounting records with detailed receipts and disbursements.

"All of the owners should be involved and understand the finances," Dyke said. "It really works better if they share the information."

Usually companies with 50 or more



Laurie Dyke: Many issues result when a partner doesn't take part in the finances.

employees have good accounting practices, such as internal audits, but many smaller ones don't, Dyke said. Recently, she dealt with a business that had millions in revenue, but no proper accounting records.

"It's costing them a lot of money now, because there's a dispute among the owners," she said.

Dyke recommended hiring an outside consultant or auditor to review finances a couple of times a year, depending on the company's level of risk. This helps assess the possibility of fraud in the company and improves internal controls to reduce the chances of it happening.

"It's like changing the oil," she said.

Regular checks by someone with expertise in forensic accounting, such as a certified fraud examiner, can also help

detect suspicious actions by those entrusted with the finances.

The beginning of a partnership is also a good time to help prevent the acrimony typical of business divorces.

While no prior agreement will help if one of the partners is defrauding the others, Hawkins said he believes every business should have a buyout provision of some sort. This would also deal with the fallout if one of the partners becomes disabled or dies.

"You can eliminate things you'll fight about in the future," Hawkins said. "Or at least you can reduce them."

Family businesses, for instance, often don't have written agreements between partners, he said. "It's just a recipe for disaster."

One of the most difficult aspects of company breakups is that it isn't just about the numbers and the balance sheet. A forensic accountant can help the parties come to a financial decision, rather than an emotional one, Dyke said. "Most end up settling and they should."

She compared it to cases in estate, trust and family law courts, where issue are personal for those involved.

"You've got real live people here," Dyke said. "These are people tied together through a personal relationship as well as a business relationship."

Hawkins said about 90 percent of these cases end up settling out of court.

"Some settle quickly," he said. "Some take years to settle. It's very rare you go to a jury verdict."

FASTEST-GROWING LAW FIRMS BY REVENUE

Ranked by three-year percent change in Atlanta office revenue

Rank	Firm	Three-year percent change in Atlanta office revenue~	No. of attorneys in Atlanta* / Total Atlanta staff / Attorneys worldwide	No. of offices in Atlanta / U.S. / Worldwide	Partial listing of areas of specialty	Partial listing of Atlanta clients	Managing partner(s) / Firm headquarters	Year est. in Atlanta
1.	Taylor English Duma LLP 1600 Parkwood Circle, Suite 400, Atlanta, Ga. 30339 (770) 434-6868 • www.taylorenglish.com	162%	109 152 109	1 1 1	business transactions, corporate governance, financing and taxation, M&A, employment, labor and immigration, creditor's rights and bankruptcy, complex commercial litigation, intellectual property	AFC Enterprises Inc. dba Popeyes Louisiana Kitchen, Atlanta Braves, First Citizens Bank and Trust, WellStar Health System Inc., HD Supply	Al B. Hill / Atlanta	2005
2.	Morris Hardwick Schneider 3560 Lenox Road N.E., Suite 3000, Atlanta, Ga. 30326 (404) 961-9000 • www.closingsource.net	60.1%	55 310 132	19 37 37	real estate, entertainment and sports	Academy Mortgage, SunTrust Banks Inc., Chase, Wells Fargo, Bank of America, D.R. Horton, John Wieland Homes and Neighborhoods Inc., Centex	Nat Hardwick, Art Morris / Atlanta	2005
3.	Freeman Mathis & Gary LLP 100 Galleria Parkway, Suite 1600, Atlanta, Ga. 30339 (770) 818-0000 • www.fmglaw.com	40%	47 76 47	2 2 2	commercial litigation, labor and employment, construction and design litigation, government law, insurance law	AGCO Corp., ApolloMD, C.W. Matthews Contracting Co., Tensar Corp., Staffmark, Extended Stay Hotels	Benton J. Mathis Jr. / Atlanta	1997
4.	FisherBroyles LLP 1200 Abernathy Road, Building 600, Suite 1700, Atlanta, Ga. 30328 (866) 211-5914 • www.fisherbroyles.com	34.5%	36 37 67	1 6 6	technology and outsourcing, intellectual property, corporate and securities, real estate, litigation, employment/executive compensation, trusts and estates, higher education, bankruptcy	Delta Air Lines Inc., Porsche Cars North America, LexisNexis, Suniva, Norfolk Southern, PrimeRevenue, AON e-Solutions	Kimberly Verska / Atlanta	2001
5.	Baker, Donelson, Bearman, Caldwell & Berkowitz P.C.^ 3414 Peachtree Road N.E., Monarch Plaza, Suite 1600, Atlanta, Ga. 30326 (404) 577-6000 • www.bakerdonelson.com	34%	69 118 NA	1 18 19	litigation, corporate, intellectual property, construction, environmental, securities	NA	Linda A. Klein / Memphis, Tenn.	2000
6.	Greenberg Traurig LLP 3333 Piedmont Road N.E., Suite 2500, Atlanta, Ga. 30305 (678) 553-2100 • www.gtllaw.com	33.6%	101 253 1,699	1 29 35	business litigation, corporate and securities, entertainment, environmental, financial services, intellectual property, labor and employment, products liability, real estate, securities litigation	The Coca-Cola Co., Gentiva Health Services Inc., Medtronic Inc., Morgan Keegan & Co. Inc., Morgan Stanley & Co. LLC	Ernest L. Greer / NA	1998
7.	Seyfarth Shaw LLP 1075 Peachtree St. N.E., Suite 2500, Atlanta, Ga. 30309 (404) 885-1500 • www.seyfarth.com	32%	80 169 836	1 10 11	labor and employment, real estate, litigation, corporate and finance, employee benefits and executive compensation	Prudential Insurance Company of America, Wells Fargo Bank, Wolverine World Wide Inc., The Home Depot Inc.	Steven L. Kennedy / NA	1996
8.	DLA Piper 1201 West Peachtree St., Suite 2800, Atlanta, Ga. 30309 (404) 736-7800 • www.dlapiper.com	30%	35 63 4,200	1 31 77	corporate, real estate, construction, litigation, franchise and distribution, venture capital/emerging growth	BDO, Heery International Inc., InterContinental Hotels Group Plc (IHG), NCR Corp., Pfizer Inc., Radiant Systems Inc.	Robert L. Crewdson / NA	2006
9.	Chamberlain, Hrdlicka, White, Williams & Aughtry 191 Peachtree St. N.E., 34th Floor, Atlanta, Ga. 30303 (404) 659-1410 • www.chamberlainlaw.com	21%	41 90 121	1 5 5	tax, tax planning, international tax, litigation, construction, intellectual property, corporate, estate planning, labor and employment	NA	David Aughtry / Houston	1986
10.	Burr & Forman LLP 171 17th St. N.W., Suite 1100, Atlanta, Ga. 30363 (404) 815-3000 • www.burr.com	18%	43 75 284	1 9 9	banking/finance, creditor's rights and bankruptcy, commercial litigation, economic development, labor and employment, corporate, M&A, real estate, construction	RockTenn, Wells Fargo Bank, Chatham Capital, Flournoy Development, ILD Corp, Honda Motor Co. Inc., Regions, Georgia Gulf Corp.	Erich Durlacher / NA	1995

Only those firms with 20 or more attorneys in Atlanta were considered for this listing.
* All figures are current as of November 2012.
^ Firm submitted a statement of verification supporting figures.
NA - Not available or not applicable

SOURCES: Atlanta Business Chronicle research and the firms

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