

USING THE INTERNET FOR EQUITABLE DISTRIBUTION VALUES

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During the course of equitable distribution settlement talks, we may begin negotiations over items where the value does not warrant the hiring of an expert witness. Fortunately, the internet has become a terrific source for establishing values of certain personalty, cars, coins, furniture, collectibles and the like, without additional litigation expense.

N.J.R.E. 702 sets forth the criteria upon which the Court should utilize expert testimony. The standard is whether the information is helpful to the trier of fact. The three basic requirements for the admission of expert testimony are: (1) the intended testimony must concern a subject matter that is beyond the ken of an average juror; (2) the field testified to must be at a state of the art that such an expert's testimony could be sufficiently reliable; and (3) the witness must have sufficient expertise to offer the intended testimony. See, DeHanes v. Rothman, 158 N.J. 90, 100 (1999) quoting State v. Kelly, 97 N.J. 178, 208 (1984).

N.J.R.E. 701 addresses the admission of lay testimony. The standard is that the witness' testimony in the form of opinion or inferences may be admitted if it is rationally based upon the perception of the witness and will assist in understanding the witness' testimony or in determining a fact in issue.

It has long been established that an owner of personal property may give his or her estimate of its value. Penbara v. Straczynski, 347 N.J. Super. 155, 162 (App. Div. 2002). The extent of the probative value is for the consideration of the fact-finder. See, Lane v. Oil Delivery, Inc., 216 N.J. Super. 413, 419 (App. Div. 1987). "If an item is brand new, proof of the item's original cost may sustain an owner's burden of proof as to value." Id.

In addition to an individual being able to provide lay testimony as to personal property, N.J.R.E. 803(c)(17) provides an exception to the hearsay rule to allow the admission of "market quotations, tabulations, lists, directories, or other published compilations, **generally used and relied upon by the public or by persons in particular occupations.**" (Emphasis added).

For purposes of valuing personal property and utilizing published compilations, there are many instances we can use the internet to gather information as to value. The information received can be used for settlement negotiations and may even be admissible in Court.

Personal Property. Often times a person will testify to the value of his or her own personal property or collections without an expert's report. Often times, the cost of an expert would exceed the value of the asset. The first tip is to have the witness provide for its original cost at the time of purchase. If the purchase were recent, then the owner's burden of proof is met. Regardless, the witness should also testify as to the condition of the asset and provide pictures for the Court. Since N.J.R.E. 803(c)(17) allows for the admission of publications generally used and relied upon by the public, can we now go on the web and print out information on www.ebay.com and www.Bidz.com to compare the values of the same or similar items? While there is no case law directly on this issue, it could certainly

be argued that the general public relies upon websites such as the two listed above to provide a general idea of the value of the particular asset. Alternatively, information on these websites could be used as a basis for attacking the weight of the evidence on cross-examination.

Automobiles. N.J.R.E 803(c)(17) specifically allows for the values of cars to be admitted through a blue book directory. The most utilized directory is Kelley's Blue Book at www.kbb.com. In addition, you can go to www.nadaguides.com. For antique or classic cars, www.hemmings.com is useful. Bear in mind that you can utilize these compilations, but the weight of the evidence can still be challenged.

Stock listings. There are many financial institutions that offer stock prices on line. Many of them even provide the history or values of stock as of a fixed date so you can determine its market history. A helpful listing for all types of business and financial research is www.executivelibrary.com. This website is a compilation of various websites including newspapers, stock listings, financial market reports, commodities reports, among many others.

Guide Books. In many situations, you may have collections, such as stamps, coins, dolls, antiques, art, sports memorabilia, figurines, just to name a few. Exploring the internet may provide you price guides for these items. Many times, there may be a fee to purchase these publications. Reviewing the various guides will, however, provide you with a better understanding of what price guides are utilized and accepted in the specific industry. In researching price guidebooks on msn, google and yahoo search engines, there were over 2,000,000 websites for each search. Obviously, the ability to find exactly what you are

looking for is endless, whether it is a Beatrix Potter figurine or Elvis memento that you are looking to value!

Utilizing the internet may not obviate the need for an expert in valuing certain assets by way of equitable distribution. It can, however, greatly assist in resolving a case. Before hiring or looking to find an expert, try to use the internet to arrive at stipulated ranges of value.

Finally, I make the following disclaimer: This article is not intended to create or encourage litigation over personal property. Rather, when there are items that have "real" value and are worth negotiation, try to arrive at reasonable values through the tools provided on the internet.