IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY
FAMILY LAW DIVISION

IN RE: The Marriage of

Robert S. Luzenberg,

Petitioner/Husband

Case Number: 99-3967
Division: "A"

and

Marlene S. Forand,

Respondent/Wife Counter Petitioner

_______________________________________/

AMENDED FINAL JUDGMENT FOR DISSOLUTION OF MARRIAGE WITH PROPERTY BUT NO DEPENDENT OR MINOR CHILDREN

This cause came before this Court for a trial on a Petition and Counter Petition for Dissolution of Marriage. The Court having reviewed the file and heard the testimony, makes these findings of fact and reaches these conclusions of fact and law:

According to the evidence and testimony, the parties were married on April 14, 1984, in St. Petersburg, Pinellas County, Florida, and separated on or about June 1, 1995, while residing at the marital domicile, then situated at 5110 62nd Avenue South, St. Petersburg, Pinellas County, Florida. The testimony of the parties is that at the time of the commencement of the marriage, the wife was debt free, and the husband had such poor credit that the initial marital domicile was purchased and owned solely by the wife, as was the later marital domicile located at 5110 62nd Avenue South, St. Petersburg, Pinellas County, Florida, which the parties occupied at the time of their separation.

The testimony and evidence presented by the parties reflect that neither party has been in the military service, and there were no children born of the marriage. The wife has foregone an education and career of her own in order to assist the husband in establishing and operating two (2) business entities, ROMAR PRODUCTS, and SAFETY PURE. These businesses were established to assist the husband in the development, manufacture, marketing and sales of products related to patents that the husband obtained on water filtration products which he invented. At the time the husband and wife separated, the husband took these business entities, marketing and manufacturing connections, and started multiple new business entities using the same patents, marketing and development systems that the husband and wife, working jointly, had developed during the wife's tenure as vice-president of marketing for ROMAR and SAFETY PURE. The husband has continued to develop additional patents from those same products and water purification and filtration ideas, and the evidence and testimony would indicate that the husband currently holds as many as fourteen (14) different patents that were developed during the marriage from the ROMAR and SAFETY PURE business base information and operations. These include, but are not limited to, several porous plastic articles for flavoring beverages which, the evidence reflects, are being developed with the potential of generating millions of dollars in profits for the husband and others, as well as other business partners through multiple business entities created by and for the husband. During the marriage, the husband has developed successor entities to ROMAR and SAFETY PURE, known as FILTEX USA, LTD., a Florida limited partnership; ROBCO USA, INC., a Florida corporation; WORLD DRINK USA, a Georgia limited liability partnership; RSL INVESTMENTS, a d/b/a of Robert S. Luzenberg ("RSL"); and RSL TRUST, a Florida trust, Robert S. Luzenberg, trustee ("RSLT"); WATER INVESTMENT PARTNERSHIP; DDS INVESTMENTS, and other business vehicles which have generated for the husband regular and significant annual income in successive past years in excess of $150,000.00 annually, and will continue to generate that or greater amounts of income for the husband indefinitely into the future.

The husband currently resides in a 5,000 square foot home in Birmingham, Alabama, and operates a Lincoln Navigator as his primary vehicle. For at least the last three (3) or more years, the husband has resided at this location in Birmingham, and operated the vehicle in question as his primary mode of transportation, and has furniture, fixtures, equipment, including a home entertainment center, a golf cart, and has expended thousands of dollars for exercise equipment for his home.

By comparison, the wife is in ill health, has few marketable skills, and no ability presently to support herself, nor has she been able to do since the husband ceased paying support subsequent to the separation of the parties. The testimony and the evidence reflects that the wife has not been provided with adequate support since August of 1997. She suffers from Graves disease requiring regular endocrinology and blood testing, as well as possible surgery, which she has not been able to have done due to the lack of support provided by the husband. She has umbilical and femoral hernias, and suffers from hyperthyroidism caused by stress. She is unable to have regular or periodic medical or dental preventive maintenance or care, and is rendered largely unemployable as a result of her ongoing medical problems. Due her health, disabilities and lack of support from the husband, the wife has been reduced to living with her elderly mother as her dependent, does not have a motor vehicle, has no credit cards, has no earnings, income, or ability presently to earn income. Despite these restrictions and limitations, however, the Court will impute to the wife earnings capacity in the amount of $1,000.00 per month, which does not approach the life style of the marriage. This is based upon the wife's employment history consisting of a high school education, with vocational L.P.N. training, and some job experience in unskilled jobs in which she has earned closed to minimum wage, including, during the period of separation, having attempted to work as a waitress. It is recognized by the Court that the wife, although presently unable to support herself, does have a limited ability to do so, which could be realized at such time as her medical problems have been addressed.

The husband presented expert testimony by Jed Friend, which the Court finds neither to be creditable or convincing. The expert did not lay out any type of rehabilitative plan, suggesting the wife could immediately work as an L.P.N. earning in a range of between \$25,000.00 and \$35,000.00 thousand dollars annually, despite the fact that she has been out of this area of work for a period of seventeen (17) years. The expert had no information on the wife's health, did not interview her, and advised the Court that he was only expressing an opinion based solely upon his knowledge of the wife's education, age, background and work experience provided by the husband's counsel, without more information or determination as to the suitability and fitness of this type of work for the wife.

Based upon the above, the Court finds that the wife is in need of, and should receive, permanent alimony.

In the course of the trial of this case, the husband testified under oath that the parties lived together as husband and wife until the husband left in June of 1995. That the marital home located at 5110 62nd Avenue South, St. Petersburg, Pinellas County, Florida, was purchased in 1987, and was in the wife's name alone because of the husband's serious credit problems. Additionally, the husband testified that the wife was involved in a serious car accident in February of 1990, wherein she suffered a brain lesion and fractured teeth. That from February of 1990 through 1994, the husband testified and conceded that the wife was not mentally capable of managing her financial affairs due to her brain lesion, which placed her in cognitive therapy she was also undergoing, reconstructive dental surgery, and she was taking multiple medications as a result of those medical conditions. The husband further testified that in July of 1991, he coerced the wife into signing a second mortgage to Dr. Harrell Ticktin, one of his business partners, on her marital home in the amount of $150,000.00, by telling her that if she did not sign off on the second mortgage along with the husband, that they were going to lose everything, which was untrue. That at the time the wife signed off on the second mortgage, she was on multiple mind altering medications for pain, was undergoing cognitive therapy and physical therapy as a result of her automobile accident, was unable to work, and was unable to manage her financial affairs, as confessed by the husband. Additionally, the husband testified that at the time the wife signed off on the second mortgage, he was completely aware that she was unable to appreciate the nature of the mortgage agreement which he forced her to sign, and that he was aware that she relied on every representation he made to her, whether it was true or false, because of her frail mental state. The husband affirmed that in fact this testimony was given previously under oath, and was true and correct, when directly questioned by the Court.

The history of this case reflects a prior dissolution of marriage action initiated in the Courts in and for Hillsborough County, Family Law Division, by Marlene S. Forand, assigned Case No. 96-07946, Division C, which was dismissed by the wife in her *pro se* status after her prior attorney, David A. Manney, Esquire, withdrew from that representation due to the failure of the husband to pay fee and costs awards ordered by the Court in that proceeding, and the wife's inability to pay for continued representation. The Court file from this prior action was offered and received into evidence in the case currently being litigated before this Court, and the parties stipulated that the

Court could accept transcripts and orders from the prior case, and could take judicial notice of the testimony and rulings in that prior litigation, in making a determination of the rights and entitlements of the parties in this cause.

There has been no evidence from the husband as to any sickness, disability or physical or mental limitations or infirmities on the part of the husband, or otherwise any indication of a credible and convincing nature that the husband is not capable of continuing to generate regular comparable income indefinitely in the future to that which he has generated in the past. Immediately after the separation, the husband voluntarily agreed to pay to the wife, and in fact did pay to her for a period of approximately six (6) months, the amount of $7,000.00 per month, later reduced to $6,000.00 per month, and finally terminated when the wife obtained legal representation. The Court, therefore, finds that the husband has the financial ability and capacity, and the evidence supports both an actual and/or imputed capacity, to generate income of a minimum of $150,000.00 annually. Any claims of lack of income in the past or ability to generate this level of earnings in the immediate and continuous future I find to be unsupported by the evidence, and, if existent whatsoever, the sole result of voluntary unemployment or underemployment by the husband.

Further, I find that the husband's testimony admitting that he received at one time, after the separation payments in excess of $200,000.00 from MA Industries, Inc., as partial compensation for the purchase of manufacturing rights for the sale and distribution of one of his patented products, while stating under oath that he receive no income during that same period of time, represents either a gross lack of understanding of the meaning of the term "income", or an intentional understatement by the husband of his financial position, earnings and earnings capacity. It is noted by the Court that the husband, in addition, retained rights to receive a percentage of all revenues indefinitely in the future generated by the manufacture, sale and distribution of that product.

From the testimony and evidence, a great discrepancy has been presented to the Court between the husband's testimony, and the documentary evidence and depositions received by the Court, as well as the testimony presented by the wife. There were no documents or corroborating testimony presented to confirm the representations, other than that of the husband as concerns his financial limitations and inabilities to pay support or alimony to the wife, both since August of 1997, and in the future. The documentary evidence, as well as the wife's testimony, and witnesses presented in her case, appears to be the more convincing and consistent evidence in the case, in that either the husband is failing to provide a full and accurate disclosure or has arranged his financial affairs so as to short change the wife. This position is further supported by, and this Court additionally relies upon, testimony and hearing transcripts taken pursuant to the Wife's Motion for Contempt, and other related motions, orders and findings of the Court taken in the prior dissolution action brought by the wife, and stipulated by the parties that as admissible for the Court's consideration in this case.

The Court is also aware of comments by the husband that he would arrange his affairs so that the wife would receive nothing, and although these types of comments are common in this type of case, the evidence presented contains numerous disparities concerning the husband's representations concerning his assets and income.

That due to the lapse of time between the separation of the parties and the final hearing, the parties have no joint assets, all such real or personal property left in the possession of the wife having been foreclosed upon or seized by the husband's business partners, or others, to satisfy the husband's business debts guaranteed by the wife. This has included the marital domicile (loss of $500,000.00

in equity), art work from the home (in excess of $50,000.00), and the wife's jewelry (in excess of $53,000.00), all of which belonged to the wife alone at the time of its forfeiture. These items, I find, based on the testimony, were forfeited by the wife, either due to the misrepresentations by the husband to the wife inducing her to secure his business debts, or as a direct result of the husband's refusal to provide the wife with support after their separation. It is not possible, therefore, for the Court to address the disparity of the parties positions through the award of special equities or the award of property or interests in personal or real property as lump sum or partial alimony.

As the wife has no income other than alimony, and her current age of 44, poor health, and lack of work experience make it unreasonable to expect that she can look forward to much income from any job she might be able to obtain, and certainly nothing to support herself in a manner reasonably commensurate with the standard of living established during the marriage, the Court finds it appropriate to award the wife permanent periodic alimony in the amount of $6,000.00 monthly, commencing December 15, 2000, and each month thereafter, said sum to be paid into the registry of the Court.

In order that the wife will not be required to deplete this income, the husband shall pay to the wife the fees and costs of her attorney and any expenses incurred in the litigation of this proceeding, the amount of which shall be determined by the Court subsequently, if the parties are unable to agree. It is noted, in this regard, that the husband's lack of cooperation and apparent concealment of information and assets has resulted in counsel for the wife having to expend significant efforts to locate and uncover such information.

The documentary evidence reflects that the husband's assets and income potential in the future are considerable, and may run into the millions of dollars. Each of the husband's patents are a significant asset, as are the husband's other many ongoing business enterprises that were developed from the ROMAR and SAFETY PURE business entities and patents initially created through the joint efforts of the husband and wife. Similarly, the identity and nature of the trust assets and benefits which the husband is deriving from RSL INVESTMENTS, a d/b/a of Robert S. Luzenberg ("RSL"), and RSL TRUST, a Florida trust, Robert S. Luzenberg, trustee ("RSLT"), only revealed in the supplementary evidence received by the Court on October 30, 2000, are unspecified, and the husband shall provide the Court, within thirty (30) days from the date of this Order, all documents, income statements, bank statements, canceled checks and other papers relating to said trusts, which shall be provided to the Court for an in-camera inspection. The Court reserves jurisdiction to make additional determinations concerning other distributions, and to modify this Order after reviewing the trust documents, which have not been previously disclosed to this Court, and the existence of which were not listed or admitted by the husband on any sworn financial disclosure, deposition or interrogatory answers given under oath.

The Court notes that, although there has been no motion or request for civil or criminal contempt, or a referral of this matter to the State Attorney's Office for an investigation of possible perjury charges, the Court reserves jurisdiction to address such issues concerning the sworn testimony and evidence given by the husband in this cause by those means should the husband fail to comply strictly with the directions of this Court as set forth in this Order, as well as by all other powers of enforcement with which this Court is legally endowed, upon proper motion by the wife.

The Court has reviewed and relied upon both the documentary evidence and the testimony from witnesses provided by the parties. In addition thereto, however, the Court has reviewed the standards and criteria set forth in <u>Smith v. Smith</u>, 737 So. 2d 64 (Fla. 1st DCA 1999); <u>Ziegler v.</u>

Zeigler, 635 So. 2d 50 (Fla. 1st DCA 1994); Galant v. Galant, 468 So. 2d 479 (Fla. 2nd DCA 1985); Canakaris v. Canakaris, 382 So. 2d 1197 (Fla. 1980); Hann v. Hann 629 So. 2d 918 (Fla. 2nd DCA 1993), and the analysis of Florida Statute § 61.08, as set forth in Brooks v. Brooks, 678 So. 2d 1368 (Fla. 1st DCA 1996). Also, Sokol v. Sokol, 441 So. 2d 682 (Fla. 2nd DCA 1983) and other case law pertaining to the issues of contempt of court enforcement proceedings.

WHEREFORE, it is thereupon **ORDERED, ADJUDGED** and **DECREED** as follows:

1. The Court has jurisdiction over the subject matter and the parties.

2. At least one party has been a resident of the State of Florida for more than 6 months immediately before filing the Petition for Dissolution of Marriage.

3. The parties have no minor children in common, and the wife is not pregnant.

4. The marriage between the parties is irretrievably broken. Therefore, the marriage between the parties is dissolved and the parties are restored to the status of being single.

5. The assets and liabilities listed herein are divided as indicated. The date of valuation of these assets and liabilities is, unless otherwise indicated, as of the date of the divorce trial.

6. The Court finds that there is a need for, and that Petitioner (hereinafter Obligor) has had the present ability to pay, alimony as follows:

a. Permanent Periodic. Obligor shall pay permanent periodic alimony to Obligee in the amount of **$ 6,000.00**, per month, payable Monthly into the Hillsborough County Central Governmental Depository, Clerk of the Court, P.O. Box 3450, Tampa, Florida 33601-3450, along with any depository service charges, beginning **December 15, 2000**, as well as the monthly payment amounts indicates in paragraph (b) below. This alimony shall continue until modified by court order, the death of either party, or the remarriage of the Obligee, whichever occurs first.

b. That for past support, and the improper forfeiture of the wife's assets, the husband shall pay to the wife the sum of **$240,000.00**. This lump sum shall be paid in equal monthly increments over a period of no more than one (1) year, commencing January 30, 2001;

7. The Court has considered all of the following in awarding alimony:

a. The standard of living established during the marriage;

b. The duration of the marriage;

c. The age and physical and emotional condition of each party;

d. The financial resources of each party, the nonmarital and the martial assets and liabilities distributed to each;

e. The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party; and

f. All sources of income available to either party.

Additionally, the Court has considered the factors set forth in the findings of fact above.

8. The husband shall maintain life insurance to protect the lump sum and future alimony payments to the wife in the amount of **$240,000.00**, and shall provide a policy of term life insurance to counsel for the wife within thirty (30) days from the date of this Order in said amount. This obligation is without prejudice to the husband to move for the entry of an Order discontinuing such insurance at such time as the lump sum payable above has been completed;

9. That the husband shall procure, maintain and pay for health insurance premiums for the wife not to exceed $500.00 monthly, until such time as she obtains access to such on her own, and shall reimburse to the wife all non-covered medical expenses within thirty (30) days after receipt of a request for same, not to exceed **$10,000.00** annually;

10. That the husband shall relieve the wife of all judgments entered against her which remain unsatisfied and which are remaining enforceable, and shall obtain, by whatever means he deems necessary, satisfactions of all judgments against the wife within twenty-four (24) months from the date of this Order. In the interim, should any steps be taken by any judgment creditor to attach, garnish or procure the monthly income of the wife for the satisfaction of those obligations, the husband shall take such steps as are immediately necessary to relieve the wife of any further obligation for the payment of said judgement, and shall restore to the wife, if necessary, the amount equal to any property taken which has been received or acquired due to payments or distributions as directed by this Court. The wife is hereby relieved of all legal liabilities for all judgments rendered against her and which are recorded as of this date. The wife shall, within thirty (30) days from the date of this Order, provide the husband with a list of all such judgments, and the husband, within thirty (30) days thereafter may, by motion addressed to this Court, challenge any of those judgments as not being caused by, or unrelated to, his business or conduct in the failure to provide the wife with support in the past. These obligations are imposed upon the husband as a result of his admitted and confessed intentional and purposeful misrepresentations and deception of the wife in causing her to secure his business debts with her home, jewelry, art work, automobile and other personal possessions, all of which were lost to the wife as a result of the husband's business dealings. The Court specifically finds it more than suspect that particularly the art work, jewelry and home were all taken by the husband's business partner, Dr. Harold Tickten, who remains as the largest judgment creditor against the wife, which includes, but is not limited to, a judgement in the amount of $68,300.00 entered against her for the value of the art work alone, on May 2, 2000, and who has made no efforts to collect the judgments or the remaining deficiencies from or against the

assets of the husband;

11. That the wife is awarded a 29.5% interest in WORLD DRINK USA, LLP, which, from the evidence, is equal to one-half (½) of the husband's current interest therein. The husband shall provide complete financial disclosures semi-annually starting January 2, 2001, concerning the business activities, and the wife shall be accorded all the same privileges, rights and benefits of the husband in that business enterprise. Likewise, the wife is awarded a one-half (½) interest in all of the husband's business entitlement, rights, ownership, or interests in each of the following enterprises:

1. ROBCO USA, INC.;
2. W.D. USA, INC.;
3. RSL INVESTMENTS;
4. RSL TRUST;
5. FILTEX USA, LTD.;
6. DDS INVESTMENTS;
7. WATER INVESTMENT PARTNERSHIP;
8. ALL PATENTS ACQUIRED BY THE HUSBAND PRIOR TO THE DATE OF THIS ORDER.

Documents effectuating the necessary transfer of one-half (½) of the husband's interests in the aforesaid business entities and assets shall be provided to counsel for the wife within thirty (30) days from the date of this Order;

12. The Court finds there is a need for, and ability to pay, attorney's fees, costs and suit money, and the husband shall pay the wife's expenses in this regard;

13. Counsel for the wife shall provide to husband's counsel an itemized statement of fees and costs within thirty (30) days from the date of this Order, and, failing an agreement of the parties, the Court shall proceed with the scheduling of the necessary hearing to address that issue.

14. The wife's former name of Marlene S. Forand is restored;

15. The Court reserves jurisdiction as set forth above and to modify and enforce this Final Judgment, including but not limited to, after the disclosure and production of the trust information as required on page nine (9) of this Order;

16. The above entitlements shall be enforceable and collectable by the former wife, for all of which execution shall issue, and this judgment shall become a lien on any real estate owned by the former husband in favor of the former wife, Marlene S. Forand, at the address as hereinafter designated below:

Marlene S. Forand
c/o Haas & Beik
Attorneys and Counselors at Law
1901 North 13th Street
P.O. Box 1700
Tampa, Florida 33601

DONE and **ORDERED** in Chambers at Tampa, Hillsborough County, Florida, on this 13th day of February, 2001.

HONORABLE GREGORY P. HOLDER
Circuit Court Judge

COPIES TO:
Raymond A. Haas, Esquire (attorney for former wife)
Grady Irvin, Esquire (attorney for former husband)

Hillsborough County Clerk of Court
Central Governmental Depository

STATE OF FLORIDA)
COUNTY OF HILLSBOROUGH)

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE IN MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL THIS 28th DAY OF February 20 01.

RICHARD AKE, CLERK
BY Leslie Allen D.C.

OR BK 10628 PG 0519