

VALUATION OBSERVATIONS

*Some practical observations from a practicing
business appraiser.*

VLC

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EXPERT WITNESS V. CONSULTANT *WHICH VALUATION PROFESSIONAL DO YOU NEED?*

Your litigation team can benefit from the services of a valuation professional. A good litigation services professional brings to the team experience and insight into the intricacies of the business that an attorney — who focuses on the intricacies of the law — doesn't have time to delve into. The valuation professional can serve as either expert witness or consultant. Let's look at some of the services that can benefit attorneys and others involved in business valuation-related litigation.

What a Valuation Expert Witness Can Do for You

You may require a valuation expert witness in many situations:

- ◆ Economic loss,
- ◆ Divorce,
- ◆ Dissolution of business,
- ◆ Breach of contract, and
- ◆ Partner and shareholder disputes.

Here we look at a few of these situations and how valuation advice can help:

Divorce. On top of all the other complex, difficult processes involved in a divorce, if one or both spouses own a business, it is also time for a valuation. In divorce valuations, the standard of value in Ohio is "equitable". Although not defined by statute or case law, the considerations are the same as those used in determining fair market value. There are some substantial differences from state to state. An inexperienced business appraiser may not recognize this.

Assessing damages. Valuers are often asked to assess damages. These can be difficult to quantify and require the expertise of an experienced valuation consultant. The need for damage assessment may occur in a variety of situations, including contract breaches, intellectual property infringement, employment discrimination, personal or business-related injury, product liability, and insurance claims.

Bankruptcy. In bankruptcy, there usually is too little to go around. But how much actually is available? Debtors and creditors often differ about an asset's worth. As a result, valuation may be necessary for many purposes in bankruptcy:

- ◆ To assess the value of a creditor's secured claim,
- ◆ To make adequate disclosure in support of a reorganization plan,
- ◆ To evaluate offers for property sold out of the ordinary course of business,
- ◆ To gauge the economic feasibility of any reorganization plans, or
- ◆ To determine whether a creditor's position was improved within the preference period before a case begins.

Bankruptcy is difficult enough for both debtor and creditor without arguments about the value of assets. Prudent business people will come to mutually agreeable valuations so that they can turn their attention to the formulation, negotiation and confirmation of a reorganization plan that serves everyone's interests. All involved are better off if they value their claims and interests rather than leaving it to the court.

What a Valuation Consultant Can Do for You

The benefits a valuation professional can provide an attorney during litigation go beyond just performing a valuation or serving as an expert witness. A valuation specialist has knowledge not available to the general public that can prove invaluable.

Because they understand the intricacies of a business, valuation professionals can add depth of knowledge the other team members may lack. For example, a buy-sell agreement involving a complicated business and estate requires specialized knowledge of passive losses, capital gains and loss analysis, timing the consideration of income and deductions, planning exit strategies, and taxation. Many valuation professionals have this knowledge.

Some of the services a professional valuator can provide include:

- ◆ Interpreting a company's financial statements and other pertinent information,
- ◆ Preparing experts for trial, planning the cross-examination of the opposition's experts and developing rebuttal arguments,
- ◆ Exploring the strengths and weaknesses of both sides' cases,
- ◆ Gathering and analyzing facts, developing strategies and reaching conclusions based on the information available,
- ◆ Determining which discovery documents may be useful or necessary for analysis,
- ◆ Applying business and financial expertise to the case,
- ◆ Exploring the potential tax and investment consequences of settlement options, and
- ◆ Freeing up time for the attorney to devote to the case's legal aspects.

But don't confuse the valuation consultant with a valuator serving as an expert witness. These roles are not the same, and can have different implications for your case.

Using a valuation consultant in addition to testifying experts gives attorneys many advantages. As a consultant, the valuation professional is free to act as an advocate for the attorney and client and to work actively toward a winning solution for your side. For example, he or she can provide answers to questions like the following to help you pinpoint weaknesses in the opposing expert's arguments:

- ◆ How did the opposing expert establish the facts?
- ◆ What methods did the expert use in determining his or her opinion?
- ◆ What specific documents did the expert use, and what was their effect on his or her analysis?
- ◆ What changes in the assumptions led to changes in the financial result?
- ◆ How is the expert's report inconsistent with his or her earlier reports?

Get Positive Results

With a financial advocate on the litigation team, the outcome of the case is more likely to provide positive results.

If you would like additional information, or have a question, please do not hesitate to call.

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Terri Lastovka is the founder of Valuation & Litigation Consulting, LLC. Her practice focuses on business valuations and litigation consulting in the areas of domestic relations, gift and estate tax, probate, shareholder disputes, economic damages, and forensic accounting. She draws from a wide range of experiences, including public accounting, law, banking, and CFO. She has received extensive training from the American Society of Appraisers in the area of business valuation and works closely with members of the bar to effectuate practical settlements. Terri also serves as the Director of Legal & Finance for Journey of Hope, a grass roots non-profit organization providing financial support to cancer survivors.