Thought Leadership Discussion

Practical Guidance to the Family Law Counsel Working with a Valuation Specialist

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When the marital estate includes a closely held business, a business ownership interest, debt or equity securities, or intangible assets, the family law counsel ("counsel") may retain a valuation analyst ("analyst") who specializes in the valuation of such financial assets. The counsel may retain such a valuation specialist when the marital estate ownership interest includes shares in a family-owned or otherwise closely held company, partnership interests in a professional practice, a professional license, or family-owned intellectual property rights. This discussion summarizes some of the issues that counsel may consider in the selection of such a valuation specialist. In addition, this discussion summarizes the development procedures and the reporting procedures with regard to such a family-law-related business or intangible asset valuation. Counsel should be generally familiar with the professional standards and practices for the valuation development and the valuation reporting related to such marital estate financial assets. This is because, in addition to retaining the analyst, the counsel will have to work with, rely upon, examine, and defend the selected analyst—and the analyst's valuation expert report. And, in a deposition or at trial, the counsel may have to cross-examine an opposing analyst—and respond to the opposing analyst's valuation expert report.

Introduction

When there is a controversy regarding the ownership or the distribution of a closely held business ownership interest in the marital estate, the family law counsel ("counsel") may retain a valuation analyst ("analyst") who specializes in such valuation-related forensic analyses.

Such closely held business ownership interests may include the stock (or limited liability company membership units) of the family-owned or otherwise closely held company, the partnership units of a professional practice (or a professional services company), a practitioner's professional license, and family-owned intangible assets and intellectual property rights.

As explained below, counsel may look for an analyst who has specialized experience and expertise in at least one of the following:

1. Valuing the subject type of family-owned closely held business ownership interest
2. Conducting valuations in the subject entity's industry or profession
3. Conducting analyses in a family law or similar forensic environment
4. Providing testifying expert services at deposition and/or at trial.

This discussion provides practical guidance to counsel with respect to selecting and working with a valuation specialist in a family law matter. This discussion summarizes the typical development procedures and the typical reporting procedures with respect to the family-law-related valuation of such financial assets. And, this discussion summarizes the professional standards and practices that the analyst will typically follow in the family-law-related valuation.

In other words, this discussion summarizes what the counsel needs to know to retain and work with an analyst in the valuation of the marital estate's business ownership interests.

Considerations Related to Selecting the Valuation Specialist

Counsel will exercise due diligence in selecting the valuation consulting firm—and the individual analyst—to conduct the valuation of the marital estate's closely held business, business ownership interest, securities, or intangible assets.

Some of the criteria that counsel may consider during the valuation specialist selection process include the following:

1. The qualifications (experience and expertise) of the valuation services firm
2. The qualifications (experience and expertise) of the individual valuation analyst
3. Any prior relationships of the valuation services firm with the subject business

Considerations regarding the Valuation Services Firm

There are many types of professional services firms that provide financial asset valuation services in family law matters. Such professional services firms include public accounting firms, industry-specialist consulting firms, valuation groups within general financial advisory services firms, business valuation firms, forensic analysis firms, economic consulting firms, and many others.

Some of these firms may be very small, including sale practitioners and sole professional practices. Some of these firms may be quite large, with dozens of officers and hundreds of practitioners.

Some of these professional services firms specialize in the analysis of certain types of business ownership interests, such as closely held companies, closely held business ownership interests and securities, professional practices or licenses, or intangible assets and intellectual property. Some professional firms specialize in the analysis of certain industries or professional practice specialties.

Some of these professional firms specialize in controversy-related forensic analyses; these firms primarily specialize in providing consulting expert services and testifying expert services. And, some professional firms provide valuation services for a broad variety of purposes, including transactions, taxation, financial accounting, corporate planning—as well as litigation support.

The qualifications of each valuation services firm can be demonstrated in different ways. Some counsel may consider retaining a firm that specializes in performing the valuation of marital-estate-owned business interests. Other counsel may prefer to work with a firm that is more generalist—that is, a firm that does not focus exclusively on family law engagements or other types of litigation-related controversies.

Nonetheless, the selected professional firm should be able to demonstrate experience and expertise related to:

1. working within a controversy environment and
2. conducting valuation analyses with a forensic analysis component.

And, the counsel may be particularly interested in the professional firm's relevant valuation experience and expertise:

1. in the subject company industry or subject professional practice specialty area and
2. in the family-law-related controversy discipline.

Important Issues in the Family-Law-Related Valuation

There are relatively few areas that distinguish family law valuations from other private company or professional practice valuations. However, the professional services firm—and the selected individual analyst—should be familiar with such differences.

For example, in family-law-related business and security valuations:

1. the appropriate standard of value and the appropriate premise of value may vary by jurisdiction—and may be different from the standards and premises applied in business and security valuations performed for transaction, taxation, or other purposes;
2. the identification and the valuation of the personal goodwill component of the subject closely held business enterprise may be an important issue;

3. the measurement of any value appreciation (or depreciation) between two dates (e.g., a date of marriage and a date of filing for a divorce) may be an important issue;
4. the amount of any extraordinary (i.e., above the industry average) business value appreciation during the marriage period may be important issue;
5. the valuation of the subject business on multiple dates (e.g., the date of the spousal separation, the date of the filing for divorce, the trial date, etc.) may be an important issue; and
6. the use of forensic accounting procedures—to identify hidden assets, company-paid personal expenditures and the like—may be an important issue.

Considerations regarding the Valuation Analyst

The professional qualifications of the individual analyst are also important. Since the individual analyst will likely be providing testifying expert services at deposition or at trial (or both), the professional qualifications of the individual analyst should (1) impress the finder of fact and (2) withstand rigorous contrarian scrutiny.

For further reading on this subject, see "Professional Designations: Evaluating Expert Witness Credentials in Divorce Cases Involving Professionals" (Chapter 23), by Charlene Blalock and Charles Wilhoite, in *Valuing Professional Practices and Licenses: A Guide for the Matrimonial Practitioner*, Ronald L. Brown, ed. (New York: Wolters Kluwer, 2017)

While assessing the professional qualifications of the individual analyst, the counsel may inquire about the analyst's personal experience in conducting valuations:

1. related to the subject business ownership interest,
2. in the subject entity's industry, and
3. within a litigation or forensic environment.

In terms of education, many valuation analysts have formal education in finance, accounting, and/or economics. In the same respect, many (but not all) analysts hold one or more professional accreditations that are related to the business valuation discipline.

There is no statutory, judicial, or regulatory requirement that the analyst in a family law matter holds a valuation-related professional credential. Many industry consultants, economists, college professors, forensic accountants, and other types of consultants provide family-law-related valuation services—without having earned a business-valuation-related professional credential.

Nonetheless, counsel should be aware of the types of valuation professional organizations ("VPOs") that offer valuation-related training, examination, credentialing, and continuing education programs.

Some of the professional accreditations—and the related VPOs—in the business valuation profession include the following:

1. The accredited senior appraiser ("ASA") business valuation credential is granted by the American Society of Appraisers.
2. The certified business appraiser ("CBA") credential was previously granted by the Institute of Business Appraisers ("IBA") (see explanation below).
3. The certified valuation analyst ("CVA") credential is granted by the National Association of Certified Valuators and Analysts ("NACVA").
4. The accredited in business valuation (ABV) credential is granted by the American Institute of Certified Public Accountants ("AICPA").

In 2008, the IBA merged into NACVA. While NACVA no longer grants the CBA credential to new valuation candidates, it does support and maintain the CBA program for the current CBA credential holders.

It is noteworthy that each of these VPOs has developed its own set of requirements in order for a candidate to earn its professional credential. However, generally, each of the VPO credentialing requirements include college education, a minimum amount of practical experience, attendance at courses and technical training programs, reviews of demonstration reports, recommendations of current credentialed members, and the passing of a comprehensive technical examination.

In addition, each of the VPOs have ongoing ethical standards and continuing professional education requirements.

In addition to the business-valuation-specific credentials, it is noteworthy that many family-law-related valuation practitioners are either a certified public accountant ("CPA") or a chartered financial analyst ("CFA").

The CPA credential involves a uniform national examination and state-specific accountancy licensing requirements. Many CPAs are (but are not required to be) members of the AICPA. The CFA credential is granted by the Chartered Financial Analyst Institute ("CFAI").

It is noteworthy that each of the four above-mentioned VPOs (i.e., the ASA, IBA, NACVA, and AICPA) have promulgated their own set of professional standards. (In 2008, the IBA professional standards were conformed to—and then merged into—the NACVA professional standards.)

The most voluminous of these various sets of business valuation professional standards is the AICPA *Statement on Standards for Valuation Services* ("SSVS"). The title of SSVS is *Valuation of Businesses, Business Ownership Interests, Securities, and Intangible Assets.*

Unrelated to any of the above-mentioned VPOs, the Appraisal Standards Board of the Appraisal Foundation promulgates the *Uniform Standards of Professional Appraisal Practice* ("USPAP"). The USPAP standards numbers 9 and 10 relate to the development and the reporting (respectively) of a closely held business valuation or an intangible asset valuation.

Prior Relationship of the Valuation Services Firm and the Subject Company

The counsel may also inquire about independence issues when retaining the selected valuation services firm or the individual analyst. A concern may arise if the valuation services firm works regularly for the subject closely held company or professional practice.

That association may present the appearance of a bias. That is, the valuation services firm may appear to be partial to the interests of the "inside spouse"—that is, the spouse that regularly retains the services of that professional firm at the subject company or professional practice.

Considerations Related to Reviewing the Business Interest Valuation Report

The first step in the counsel's review of the family-law-related business or security valuation report is to become familiar with the business valuation process. The counsel should understand the level of due diligence and analysis that was conducted by the analyst in order to reach the closely held business or security valuation conclusion.

For example, the counsel may be interested in whether the analyst will conduct interviews with the subject company/practice management—or with other parties—during the course of the valuation. These interviews may be conducted to:

1. understand the nature and history of the subject closely held company or professional practice and
2. discuss the historical and prospective performance of the subject closely held company or professional practice.

If all of the parties agree, the counsel may arrange for these interviews to take place in person at the subject company/practice facilities. This arrangement may provide the analyst with the opportunity to tour the subject company/practice facilities and to view the physical condition of the subject company/practice tangible assets.

Again, if all of the parties agree, the interview process may also allow the analyst to gain a better understanding of the subject company/practice (1) products and/or services, (2) strategic plan, (3) competitors, and (4) competitive position in the market.

The family-law-related business or security valuation analysis may be documented with a narrative valuation report. As stated above, each of the above-listed VPOs has issued professional standards with regard to the reporting of closely held business, security, and intangible asset valuations.

The following sections provide a summary of the typical contents of the family-law-related closely held business or security valuation report. This summary may be of interest to the family law counsel involved in the valuation of the marital estate's financial assets.

Objective of the Analysis

The family law business or security valuation report should describe the objective of the analysis. That objective statement should include the following:

1. A description of the subject business ownership interest
2. The intended standard of value
3. The valuation "as of" date

Each of these topics is discussion below.

Description of the Subject Ownership Interest

The family law business or security valuation report should adequately describe the marital estate's business ownership interest subject to valuation. Typically, this description includes the following:

1. The number of shares (or other ownership units) subject to valuation
2. The name of the closely held company or professional practice
3. The form of ownership

For example, a description of the valuation subject may read as follows:

> We estimated the fair market value of 20,000 shares of the voting common stock of ABC, Inc. ("ABC"). ABC is a corporation organized in the State of Delaware.

The above description provides the finder of fact in the family law matter with (1) the exact number of shares (or units) that are subject to the valuation and (2) the name of the closely held company/ practice that is the subject of the analysis.

Standard of Value and Premise of Value

The family law business or security valuation report should describe the standard of value (or definition of value) that is concluded in the analysis.

Most jurisdictions have jurisdiction-specific standards of value and premises of value that are appropriate for family law purposes.

Counsel should inform the analyst—as a legal instruction to the analyst's assignment—of the appropriate standard of value in the subject family law matter.

These jurisdiction-specific standards (or definitions) of value are usually based on statutory authority or judicial precedent. Often (but not always), these standards (or definitions) of value are generally consistent with the fair market value standard of value.

There are several definitions of fair market value, but most of these definitions contain similar language. Fair market value is generally defined to be the price at which the property would change hands between a willing buyer and a willing seller, when neither is under any compulsion to buy or to sell, and with both parties having reasonable knowledge of the relevant facts.

Some analysts expand this definition to add that the willing buyer and seller are hypothetical parties—as opposed to a specific buyer and/or a specific seller. Nevertheless, the important elements of the fair market value definition remain the same.

That is, an unrelated buyer and seller are coming together to conduct a transaction when neither is being forced to buy or sell and both parties are aware of all relevant information concerning the subject business ownership interest.

The family law business or security valuation report should also describe the premise of value—that is whether the subject closely held company/ practice was valued:

1. as a going-concern business enterprise or
2. based on a liquidation premise of value.

If the analyst did not value the subject closely held company/professional practice as a going concern, the valuation report should discuss the rationale for conducting the valuation in that manner.

Purpose of the Analysis

The family law business or security valuation report should describe the purpose of the analysis.

Typically, the purpose of the business or security valuation report is to provide information for the finder of fact in the family law matter.

In any event, the business or security valuation report should describe the purpose of the analysis so there is no confusion over the intended use of the valuation report.

Valuation Date and Report Date

The family law business or security valuation report should indicate (1) the valuation date and (2) the report date.

The valuation date is the date "as of" which the analyst's opinion of value applies. The report date is the date the valuation report was prepared.

For example, the valuation report may summarize the fair market value of the ownership interest as of December 31, 2018. However, the valuation report may not be prepared until April 15, 2019. In this case, the valuation date is December 31, 2018, and the report date is April 15, 2019.

In this example, the counsel should understand that the valuation opinion takes into account all known and knowable information available through December 31, 2018. Under the fair market value standard of value, the valuation report will typically not take into account any information that became available, or known, subsequent to the valuation date.

Level of Value and the Prerogatives of Ownership Control

During the valuation analysis, the analyst will gain an understanding of the ownership control attributes (or the lack thereof) associated with the marital estate's business ownership interest. For example, the subject business ownership interest may be one of the following:

1. A 35 percent noncontrolling ownership interest in the closely held company or professional practice total equity
2. A 51 percent ownership interest that has some ownership control level attributes
3. An 80 percent ownership interest that has many of the features of absolute ownership control

The family law valuation report should clearly identify the subject business ownership interest and describe the prerogatives of ownership control that accompany the subject ownership interest.

For example, a 35 percent ownership interest may allow the holder to elect one board member but may not provide any other opportunities to effectuate change at the closely held company/practice. In this case, the ownership interest would normally be valued as a noncontrolling ownership interest.

In contrast, a 51 percent ownership interest may allow the holder to exercise ownership control over several aspects of the closely held company or professional practice. These prerogatives of control may include, but are not limited to the following:

1. The appointing of new board members and management personnel
2. The changing or renegotiation of management compensation and perquisites
3. The issuing or repurchasing of the closely held company shares
4. The issuing or repaying of the closely held company debt
5. The changing of the strategic direction of the closely held company

In this case, the family law business or security valuation report should:

1. identify the specific control attributes of the subject business ownership interest and
2. explain how these attributes were considered in the valuation process.

A holder of an 80 percent ownership interest may have not only the prerogatives of control listed in the previous paragraph. That ownership interest holder may also have the ability to sell the closely held company/practice or substantially all of the closely held company/practice assets. Once again, this level of ownership control should be identified in the family law valuation report and properly reflected in the valuation analysis.

In addressing the level of ownership control within the business or security valuation report, the analyst may also discuss the distribution of stock or unit ownership. This may be particularly relevant in situations where no one shareholder has a controlling ownership interest in the closely held company stock or partnership units.

Sources of Information

A family law business or security valuation report will typically include a section that lists the data and documents that the analyst relied on to develop the closely held company or professional practice valuation opinion.

By reviewing this section of the family law business or security valuation report, counsel will have an understanding of the documents that were considered in the valuation process, including both publicly available documents and non-publicly-available documents.

The sources of information list should include not only the financial-related documents used in the valuation analysis (e.g., financial statements, empirical market data), but the non-financial-related documents as well (e.g., customer or supplier contracts, leases, licenses, corporation documents).

When it is properly prepared, the sources of information list may enable an opposing analyst to identify the documents necessary to replicate the family law business or security valuation analysis.

Description of the Subject Closely Held Company or Professional Practice

A family law valuation report will provide an adequate description for the reader to understand the fundamental position of the subject closely held company or professional practice.

A comprehensive description of the business of the subject closely held company/practice will normally include the following:

- A discussion of the history of the closely held company/practice and its current position
- A description of the products and/or services provided by the closely held company/practice
- A description of the markets served by the closely held company/practice

- A description of the environment in which the closely held company/practice competes and how the closely held company is positioned within that environment
- A discussion of the qualifications of closely held company/practice management and its depth
- A discussion of significant relationships with related parties, customers, suppliers, and so on
- A discussion of pending litigation that is significant to the closely held company/practice
- A review of recent transactions in the closely held stock/partnership units (if any)
- A discussion of any recent offers received for the closely held company/practice or its assets

Overview of General Economic Conditions and Industry Conditions

The family law business or security valuation report should provide an overview of the general economic conditions and industry-specific factors that affect the valuation of the subject closely held company or professional practice.

The economic overview may include a discussion of trends in economic growth, inflation, consumer spending, consumer confidence, interest rates, construction starts, and business spending. In each case, the analysis should be tailored to the economic factors that most directly affect the subject closely held company/practice.

This section of the valuation report may also include a discussion of leading economic indicators that may provide insight into the future performance of the closely held company/practice.

The industry overview section of the family law valuation report will typically discuss how the industry operates and recent trends affecting companies within the subject industry. The section may also describe the closely held company's position in the industry and its market share relative to other competing companies.

Subject Company or Professional Practice Financial Performance

As part of the business or security valuation process, the analyst will assess the financial performance and financial condition of the closely held company or professional practice. A summary of this financial analysis should appear in the family law business or security valuation report.

The historical financial performance of the closely held company/practice is reflected on the subject company/practice income statements and cash flow statements. The family law valuation report may include a discussion of the following:

- The historical growth or decline in revenue
- The historical growth or decline in aggregate profitability (i.e., gross profit, operating profit, pretax profit, and net profit)
- The historical growth or decline in profit margins
- The historical growth or decline in cash flow
- The historical payments of dividends

The analyst will also review the closely held company/practice balance sheet to assess its financial condition. The family law business or security valuation report may contain a discussion of the following balance-sheet-related items:

- The closely held company/practice liquidity and working capital position
- The closely held company/practice asset utilization by means of various financial ratios (e.g., accounts receivable turnover, inventory turnover, etc.)
- The closely held company/practice tangible asset base
- The closely held company capital/practice structure and leverage

The financial analysis will include not only a discussion of certain financial statement trends but also a discussion of what factors caused the respective trends.

The family law valuation report may also include a discussion of how the closely held company/practice performed relative to other companies in the industry. This comparative financial analysis typically identifies the financial strengths and weaknesses of the closely held company/practice compared to other guideline/competing companies.

The comparative analysis will help the counsel—and the finder of fact—to understand how the closely held company/practice performed relative to other companies in the industry. This comparative performance analysis may be based on such factors as growth, profitability, and volatility.

Financial Statement Normalization Adjustments

When appropriate, the analyst may make financial statement normalization adjustments to (1) the closely held company/practice and (2) the selected guideline publicly traded companies.

The financial statement normalization adjustments are necessary so that the closely held company/practice financial performance is on the same basis as the selected guideline companies' financial performance.

Some of the more common financial statements adjustments made to the closely held company/practice include the following:

- Adjustments for extraordinary or nonrecurring income and expense items
- Adjustments for differences in inventory (and other) accounting methods
- Adjustments for nonoperating income and expense items
- Adjustments for non-arm's-length transactions/arrangements
- Adjustments for excess compensation or other benefit expense

The family law business or security valuation report should identify the financial statement adjustments and adequately explain the rationale for each adjustment.

Generally Accepted Business Valuation Approaches and Methods

There are three generally accepted business valuation approaches: the market approach, the income approach, and the asset-based approach.

The family law business or security valuation report should clearly describe which approaches—and which valuation methods within each approach—were used in the analysis. In the same respect, the family law valuation report should explain which approaches were not used in the analysis—and why they were not used.

With regard to the market approach, and specifically the guideline publicly traded company method and the guideline merged and acquired company (or guideline transactions) method, the family law business or security valuation report should include the following:

- The criteria used to select the guideline companies. The selection criteria may include standard industrial code, business description, size, growth, profitability or a combination of several relevant factors.
- A description of each selected guideline company. This description may include a discussion of the selected guideline company's business, its products and/or services, and its position in the market.

  Other information, such as whether the guideline company recently completed acquisitions, may also be relevant.
- The market-derived valuation pricing multiples that were selected for the analysis. These pricing multiples may include invested capital pricing multiples or equity pricing multiples. Industry-specific factors often influence the type of market pricing multiples that are used in the stock/units valuation analysis.

  For example, the valuation of a commercial bank may involve the application of market-derived valuation pricing multiples that are based on (1) the market value of equity and (2) earnings and/or book value of total equity capital.

  In contrast, the valuation of a manufacturing company may involve the application of market-derived valuation pricing multiples that are based on (1) the market value of invested capital and (2) invested capital earnings and/or invested capital cash flow.
- The rationale for selecting the market-derived invested capital pricing multiples that are applied to the closely held company/practice financial fundamentals. The reader of the family law valuation report should be able to understand the analyst's thought process for arriving at the selected valuation pricing multiples.

  The application of an average or median market-derived pricing multiple, but without support for such a selection, is typically not appropriate.
- The rationale for the selected weighting used in the valuation synthesis. For example, if the value indication based on projected cash flow is given more (or less) weight than the value indication based on trailing 12-month cash flow, the family law valuation report should explain why.

With regard to the income approach, and specifically the discounted cash flow method, the family law business or security valuation report should include the following:

- A discussion of who prepared the financial projections. The projections are often prepared by closely held company/practice management. In other cases, the projections are prepared by the analyst with input from closely held company/practice management.

In the case of management-prepared financial projections, the valuation report may explain how the analyst tested the reasonableness of the financial projections. In all cases, the financial projections should be supportable.

- The appropriate matching of financial projections and the present value discount rate. For example, if the discounted cash flow method analysis incorporates a projection of invested-capital-basis cash flow (or cash flow available to invested capital), then the present value discount rate should be the weighted average cost of capital.

  In contrast, if the financial projections are of the cash flow available to equity capital, then the present value discount rate should be the cost of equity capital.

- A discussion of the cost of capital components. This discussion may include an explanation of how the analyst estimated the cost of equity capital, the cost of debt capital, and the weighting of each cost component in a weighted average cost of capital calculation.

- Support for the selected residual value pricing multiple or residual value direct capitalization rate. In many family law business or security valuations, the residual value calculation may represent a significant portion of the total company/practice value.

  As a result, the selected residual value pricing multiple, or the residual value direct capitalization rate, often has a substantial effect on the concluded value of the closely held company/practice. The rationale for the selected residual pricing multiple, or the selected residual growth rate within the residual direct capitalization rate, should be adequately explained and supported.

The generally accepted asset-based approach valuation methods include the asset accumulation method and the adjusted net asset value method. While the income approach and the market approach valuation methods focus on the subject company/practice income statement, the asset-based approach methods focus on the company/practice balance sheet.

The application of the asset-based approach involves a valuation of both:

1. all of the company/practice assets—both tangible and intangible—and
2. all of the company/practice liabilities—both recorded and contingent.

The asset accumulation method involves the discrete revaluation of all of the subject company/practice assets and liabilities. The adjusted net asset value method involves the collective—or aggregate—revaluation of all of the company/practice accounts. This revaluation procedure often involves the application of the capitalized excess earnings method ("CEEM").

"[C]ounsel should be aware that the asset-based approach may be used to estimate the going-concern value of an operating company business enterprise."

Typically, in the application of the asset-based approach, at least one intangible asset category is revalued by the application of either (1) the multiperiod excess earnings method ("MEEM") or (2) the CEEM.

In any event, counsel should be aware that the asset-based approach may be used to estimate the going-concern value of an operating company business enterprise. That is, the asset-based approach (unless specifically applied) does not include the liquidation value of the subject going-concern closely held company.

Finally, before the application of any valuation adjustments, the asset-based approach typically concludes a marketable, controlling ownership interest level of value.

Valuation Synthesis and Conclusion

The family law business or security valuation report should contain a section that provides (1) a valuation synthesis of alternative value indications and (2) a final conclusion of the subject company/professional practice value.

The following factors should be included in this section of the family law business or security valuation report:

- A discussion of how each value indication from each valuation approach and valuation method was weighted in the value conclusion. An explanation should be provided for each of the selected weightings.
- A discussion of any valuation adjustments—premiums or discounts—that may be appropriate to reflect the ownership control, or lack of ownership control, attributes of the subject marital estate's business ownership interest.

  The discussion of the application of valuation adjustments should include:

1. the rationale for each valuation premium or valuation discount and
2. the supporting data or factors used to estimate the valuation premium or valuation discount.

The estimated ownership control premium should reflect the adjustments that were made to the closely held company/practice financial statements. In other words, if the analyst adjusted the subject company/practice financial performance for ownership control level/discretionary items, then the analyst should not reflect these same control price benefits a second time through the application of an ownership control premium.

- A discussion of nonoperating assets (or liabilities) that need to be factored into the analysis. These may include excess cash or securities, related party loans, excess land, investments in other companies, or other assets that have not been properly reflected in the closely held company/practice valuation analysis.
- A discussion of the illiquidity, or lack of marketability, of the subject marital estate's business ownership interest. Most noncontrolling ownership interests in closely held companies or professional practices are relatively illiquid.
- A discussion of any contingent and limiting conditions. The family law business or security valuation report should contain language that lists any contingent and limiting conditions regarding the analysis and opinion.

After reviewing the family law business or security valuation report in its entirety, counsel should be in a position to understand the following issues:

- Was the valuation report readable and easy to understand or was it filled with undefined valuation terms and jargon?
- Was the valuation report comprehensive and organized in a logical manner?
- If more than one valuation date is considered, has the concluded value changed over time, and if so, what were the primary drivers of this change in value (i.e., subject company/practice performance, market performance, or a combination of the two)?
- Has the subject company/practice financial performance improved or deteriorated over time, and has the concluded value changed accordingly?
- Which generally accepted business valuation approaches and methods were used in the analysis—and why were they applied?
- Does the closely held company or professional practice valuation conclusion seem reasonable given (1) the historical and projected financial performance of the subject company/practice, (2) the relevant market-based data, and (3) the relevant general economic conditions and industry-specific conditions?
- Does the valuation conclusion properly reflect the relevant family law standard of value, premise of value, and other purpose-specific factors and/or legal instructions?

Summary and Conclusion

When the marital estate includes a closely held business, a business ownership interest, securities, or intangible assets, the family law counsel may retain a analyst who specializes in the valuation of such financial assets.

The counsel may retain such a valuation specialist when the marital estate's business ownership interest includes shares in a closely held company, partnership interests in a professional practice, a practitioner's professional license, or family-owned intellectual property rights.

This discussion summarized some of the issues that counsel may consider in the selection of such a valuation specialist. In addition, this discussion summarized the valuation development procedures and the valuation reporting process related to such a business, security, or intangible asset valuation.

Counsel should be generally familiar with the professional standards and practices related to the business or security valuation reporting and valuation development. This is because, in addition to retaining the analyst, the counsel will have to work with, rely upon, examine, and defend the work product of the selected valuation analyst. And, in a deposition or at trial, the counsel may have to cross-examine an opposing analyst—and respond to the opposing analyst's work product.

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