Litigation Insights from *Ryan*, a Shareholder Oppression Decision

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This discussion presents an insider perspective on the largest valuation-related judicial decision in Nebraska state court history.[1] This judicial decision is also considered to be the second-largest forced buyout in U.S. history.[2] This matter involved substantial value opinion differences that pitted two well-known valuation firms against each other. In Ryan, *the two valuation firms basically applied the same methodology but had differences of opinion related to (1) financial projections, (2) expected long-term growth rate assumptions, (3) selection of a modified capital asset pricing model equity size-premium, (4) selection of an unsystematic company risk premium, (5) the relevance of a failed merger and acquisition sales process, (6) application and selection of guideline public company pricing multiples, and (7) application of a tax pass-through entity valuation adjustment. In the end, the court accepted one value conclusion in full, and rejected the other value conclusion because it was found to be unreliable.*

Introduction

During the past 20 years, this author has prepared numerous valuation analyses for a wide variety of client matters. Many of the cases I work on, and have worked on over the years, involve business valuation disputes and damages measurement disputes.

These disputes have been tried in state court, the U.S. District Court, and U.S. Tax Court jurisdictions.

At Willamette Management Associates ("Willamette"), that is what we do. In many respects, that is what we are known for—valuation analyses that provide thought leadership for many purposes—including dispute resolution.

Recently, Willamette Management Associates worked on a minority shareholder oppression matter that resulted in the largest valuation-related judicial ruling in Nebraska state court history.

In *Ryan*, the District Court of Sarpy County, Nebraska (the "Court") found in favor of the Wayne L. Ryan Revocable Trust, Steven Ryan, and First Nebraska Trust, plaintiffs (collectively, the "WLRT").

The *Ryan* decision resulted in a total award of $722 million for the WLRT.

The *Ryan* matter was essentially a dispute between family members that involved the fair value valuation of Streck, Inc. ("Streck"), a multinational life sciences company.

Plaintiff, Dr. Wayne L. Ryan ("Dr. Ryan") founded Streck in 1971.

Unfortunately, Dr. Ryan passed away in November 2017, before the *Ryan* matter went to trial in 2018. After his death, his son Steven Ryan became the co-trustee for his revocable trust along with First Nebraska Trust.

Defendant Connie Ryan, Dr. Ryan's eldest daughter, is currently the Streck CEO and its president.

Connie has voting control of Streck by way of her ownership of Streck voting common stock.

Streck, Inc.

Defendant Streck is a private company. The company was founded in 1971, and it is based in Omaha, Nebraska.

Streck is a worldwide leader in developing and manufacturing quality control and diagnostic products in hematology, immunology, and molecular diagnostics for clinical and research laboratories. Streck research efforts have led to the development of several patented products for use in hematology, flow cytometry, and chemistry.

Streck has enjoyed significant financial and operational success since it began operations. Streck has increased sales every year since its inception in the 1970s.[3]

As of 2014, Streck controlled approximately 60 to 75 percent of the hematology controls market in the United States. Hematology controls accounted for approximately 34 percent (approximately $34 million) of the Streck sales in 2014.

By the time that Dr. Ryan left Streck in 2014, Streck's sales had reached $100 million, it employed 330 employees, and it operated out of a 200,000-square-foot facility in La Vista, Nebraska.[4]

Ryan Lawsuit

Prior to the filing of the complaint, there were two notable developments that led to the Ryan family discord.[5]

First, Connie Ryan gained voting control of Streck and was promoted to Streck CEO and its Chairman of the Board of Directors. Second, Connie and Dr. Ryan were not able to work together and Dr. Ryan's influence at Streck was increasingly diminished after Connie gained voting control.

As an example of the strained family relationship, as Streck engaged in a transaction process, Dr. Ryan, its largest shareholder and founder, was not allowed to participate in the process of selecting a potential buyer.

In March 2013, Eileen Ryan—Dr. Ryan's wife—passed away, and upon her death, Eileen's Streck voting stock transferred to her daughter Connie. This stock transfer gave Connie voting control of Streck, including the ability to appoint a majority of the Streck directors.[6]

Once Connie retained voting control of Streck, she assumed, based on her own recommendation to the Board, the position of CEO and Chairman of the Board of Directors, replacing her father in these roles.[7]

In 2014, just prior to the filing of the lawsuit complaint, Streck engaged in a failed sales transaction process as a way to buy out Dr. Ryan's interest. Duff & Phelps was hired in March 2014 to provide transaction advice for a proposed transaction process referred to as "Project Blizzard."

During Project Blizzard, Dr. Ryan and the trustee of Dr. Ryan's trust—daughter Carol Ryan—were excluded from the sales process. In August 2014, Project Blizzard ended without a completed transaction.

During the *Ryan* trial, the relative importance—and prescriptive pricing guidance—of Project Blizzard to the fair value determination of Streck were argued and decided.

The *Ryan* lawsuit was filed by Dr. Ryan, Dr. Ryan's Trust, and Carol Ryan, as the then-Trustee of Dr. Ryan's Trust in October 2014. The Complaint asserted two causes of action against Connie Ryan:

1. Her actions constituted acts of oppression.
2. As a shareholder, director, and president of Streck, she breached her fiduciary duties to Dr. Ryan and his Trust.[8]

Among the relief sought by plaintiffs was a request that Streck be sold to a third party.

Other Case-Related Facts

Between 2014 and the 2018 trial, there were several case-related actions. The following list summarizes many of these actions:[9]

- In December 2014, Streck appointed a special litigation committee, made up of members of its board of directors, allegedly to make a recommendation of whether to purchase Dr. Ryan's shares.
- The special litigation committee hired a valuation firm, Empire Valuation Consultants ("Empire"), to estimate the value of Streck.[10]
- On January 9, 2015, plaintiffs served the First Set of Requests for Production of Documents to Streck.
- Empire issued a report on or about January 16, 2015. The Empire report provided its opinion on the value of Streck as of October 29, 2014. To value Streck, Empire was instructed to follow certain procedures used by defendant's valuation adviser.
- On January 19, 2015, Streck filed an election to purchase Dr. Ryan's shares. Since that date, Streck has withheld paying

dividends to Dr. Ryan in order to finance the purchase of Dr. Ryan's shares.

- Pursuant to Nebraska Revenue St.§ 21-20, 166(3), the filing of this election to purchase commenced a 60-day period for negotiation of the fair value of Dr. Ryan's shares.
- On January 29, 2015, plaintiffs' counsel at Holland & Knight wrote to Streck's counsel at Kutak Rock and requested certain information for the purposes of determining the fair value of Streck.[11]
- On February 20, 2015, Streck, through its counsel, made an offer to purchase Dr. Ryan's shares for $219 million, which included $34 million in cash.
- The February 2015 offer included approximately $80 million in discounts for lack of marketability and lack of control, discounts that the Court later ruled were inapplicable to the determination of fair value in this case.
- In July 2016, just prior to the original trial date in 2016, Stacey Ryan—another daughter of Dr. Ryan—filed a lawsuit that resulted in a two-year delay in the Ryan matter.
- The trial took place in District Court of Sarpy County, Nebraska, on September 24, 2018, through October 4, 2018. Sarpy County is located just outside of Omaha, Nebraska.

Financial Adviser Experts

There were four primary financial advisers/experts that provided trial testimony. On the plaintiffs' side, Willamette and Brown Gibbons Lang & Company ("BGLC") provided testimony—each providing its own opinion of value.

However, Willamette was the plaintiff's primary financial valuation expert and BGLC assisted by providing expert testimony specifically related to the failed Project Blizzard transaction process.

On the defendants' side, there was one primary financial adviser from a self-described "global advisory firm" ("GAF").[12]

The defendants countered BGLC with an investment banker from Capstone Headwaters ("Capstone").

Just prior to the date of the Complaint on October 29, 2014, Connie Ryan engaged in estate planning, relying on a valuation prepared by GAF with a valuation date as of July 31, 2014. This GAF fair market value valuation, therefore, preceded the GAF fair value valuation used in the *Ryan* matter.

For purposes of this discussion, we refer to the fair market value valuation report as GAF Report #1 and the fair value valuation report as GAF Report #2.

The defense also engaged Loop Capital ("Loop") to provide expert valuation testimony, however, at trial, Loop did not testify.

The Valuation Dispute

In *Ryan*, the valuation firms—Willamette and GAF—basically applied the same valuation methodology but had differences of opinion related to the following:

1. The financial projections
2. The expected long-term growth rate
3. The selection of a modified capital asset pricing model ("MCAPM") equity size premium
4. The unsystematic company equity risk premium
5. The relevance of a failed merger and acquisition sales process
6. The application and selection of guideline company pricing multiples
7. The application of a pass-through entity valuation adjustment

Relativity and Document Production

The Willamette work on this matter required the review of thousands of documents, financial statements, spreadsheets, memorandums, and other due diligence materials. For Project Blizzard, Streck provided a document room for potential buyers that hosted thousands of documents and due diligence materials. We were supplied with many of the same Project Blizzard documents.

To assist us, Holland & Knight allowed us access to Relativity, an e-discovery document review platform used in *Ryan*. At the date of our report, there were approximately 6,024 documents on Relativity.

The Willamette initial document review objectives were to determine:

1. evidence of company-prepared financial projections from prior years and
2. the most current financial projection as of the valuation date.

Based on our document search using Relativity, we identified company-prepared Microsoft-Excel-

based projections that were dated at various dates in 2011, 2012, 2013, and 2014.

We applied company financial projections prepared in 2011, 2012, and 2013 in order to analyze:

1. if Streck overperformed or underperformed its long-term company-prepared projected financial performance as compared to its actual financial performance and
2. how (if at all) the company changed its long-term financial projections over time.

In other words, we analyzed whether the company met or exceeded expectations and how financial performance manifested itself in subsequent iterations of financial projections.

Based on our analysis, we found that Streck regularly exceeded one-year management projections by more than 10 percent based on revenue and by approximately 15 percent based on pretax income. The amount by which Streck exceeded management projections increased the further out the projection period.

For example, the financial projections prepared for fiscal year 2012—a projection that was prepared in 2011—were exceeded by more than 2 percent based on revenue and more than 15 percent based on pretax income in the one year ended July 2012.

Using the same financial projection, fiscal year 2014 revenue for the period ended in July 2014 exceeded its projection by 21 percent and projected pretax income was exceeded by 65 percent.

From our observations of single-year financial performance projections and multiyear financial performance projections, we concluded that Streck consistently exceeded its financial projections. In our opinion, Streck exhibited a very low risk of not meeting its financial projections.

For the valuation date financial projection, we identified numerous versions of financial projections prepared in 2014. We reviewed all the 2014 financial projections, and we selected a version dated August 2, 2014. This financial projection was the closest financial projection prior to the October 29, 2014, valuation date.

The financial projection we used agreed with the financial projection used by Loop. However, this financial projection was not used by GAF. GAF used a few company source documents to create its own projection. The GAF projection provided a noticeably lower financial projection than the company-prepared financial projection.

Financial Projections

As noted, we observed that Streck consistently outperformed its projected performance. At trial, Mike Morgan, the Streck CFO in 2014, acknowledged that Streck "planned too conservatively and that is why actual [results] beats plan every year."[13]

Streck had a stated goal of achieving $200 million in sales by 2020.[14] However, according to Morgan, his management-prepared projections were much more conservative than that.

CEO Connie Ryan expressed confidence that the Streck 2014-2019 management-prepared financial projections would be achieved and indicated they were "deliberately conservative."[15]

These deliberately conservative projections were provided to potential buyers in Project Blizzard. The projections were also used for the dispute analysis. Two factors that intentionally made the financial projections knowingly conservative included:

1. the exclusion of a potential new Streck business opportunity and
2. an understated product profit margin that was expected to improve.[16]

With respect to how the Streck growth prospects compared to the overall market, BGLC investment

banking executive John Riddle explained that Streck had a very attractive profile for revenue growth and earnings growth and a dominant position in certain product markets.[17]

Riddle specializes in providing investment banking services to companies in the health care industry. His experience includes companies in the diagnostic health care space, like Streck.[18]

According to Riddle, "there is no other company like Streck in America certainly, and perhaps in the world" and Streck has "niche market dominance."[19]

That dominance, as Riddle explained, led to market power that was independent of patent protection or some process knowledge or other specific intellectual property.

Assessing the Streck projections as compared to typical business practices, Riddle identified that Streck had huge growth opportunities, high actual growth, dominant product franchises, and additional areas of technological advancement.

Based on that, in addition to statements made by the Streck management team, Riddle explained that management projections were too conservative, and the company's growth was described too conservatively to prospective buyers.[20]

In contrast to Riddle, Capstone investment banker James Calandra, despite seeing communication from Streck management in which management described their own projections as conservative, refused to accept that Streck's projections were conservative.[21]

GAF essentially agreed with Calandra and did not provide an explanation for ignoring the conservative nature of the management-prepared financial projections. By creating and using a lower set of financial projections, the impact to value was a $10 million decrease—holding all other valuation variables constant.

In addition to creating a lower five-year discrete projection (fiscal year 2015 through fiscal year 2019), GAF ignored the relative high rate of projected growth for fiscal year 2019 and immediately dropped projections to a 3 percent long-term growth rate.

Streck had a long history of significant growth, and that growth was expected to continue for the foreseeable future. Based on our analysis, and the opinions of others including Loop and Empire, there was no reason to think that Streck growth would immediately fall off a cliff.

To support its 2020-2024 projected revenue growth rates, Willamette used equity securities analyst reports for publicly traded companies that were included in its guideline publicly traded company ("GPTC") method.

Exhibit 1 presents a comparison of 2020 to 2024 projected revenue growth rates between (1) Willamette and Empire and (2) Willamette and GAF.[22]

In *Ryan*, the Court decided that the Streck financial trends were more in line with Willamette projections than GAF projections. For example, at trial, the Court noted that "it's been established through the evidence that the projections that this company has made historically up to the valuation date were extremely conservative."[23]

Regarding its growth prospects, the Court found that Streck's historical growth rates would likely continue during 2014 through 2019, and Streck was well positioned to maintain its market share in hematology and its growth in molecular diagnostics.[24]

Expected Long-Term Growth Rate Projection

In addition to differences in the discrete period growth rates over the period of 2015 through 2024, there were difference of opinion with regard to the expected long-term growth rate assumptions. For the years 2025 forward, otherwise known as the "terminal growth period," Willamette selected a long-term growth rate based on the following factors:

Exhibit 1
Comparison of Projected Revenue Growth Rates

	Projections (Based on Streck 000411)				
Empire Valuation Consultants, LLC - Streck Revenue Performance Comparison	2020	2021	2022	2023	2024
Empire Report Revenue Growth Rate Projection - Streck 000411	8.0%	8.0%	7.0%	5.0%	3.5%
Willamette-Streck Revenue Annual Growth Rate Projection	8.0%	8.0%	7.0%	6.5%	4.5%
Difference between Empire Growth Rate Projection and Willamette Growth Rate Projection	0.0%	0.0%	0.0%	-1.5%	-1.0%

	Projections (Based on Streck 000527)				
Global Advisory Firm - Projection of Streck Revenue Performance	2020	2021	2022	2023	2024
GAF Report #2 Revenue Growth Rate Projection - Streck 000527	3.0%	3.0%	3.0%	3.0%	3.0%
Willamette-Streck Revenue Annual Growth Rate Projection	8.0%	8.0%	7.0%	6.5%	4.5%
Difference between GAF Report #2 Growth Rate Projection and Willamette Growth Rate Projection	-5.0%	-5.0%	-4.0%	-3.5%	-1.5%

1. Streck's historical financial fundamental growth rates
2. The anticipated life sciences industry growth rate
3. Equity analysts' long-term growth rates for guideline companies
4. Long-term gross domestic product growth rates plus inflation rate expectations as estimated by economists surveyed in the *Livingston Report*, an economic report published by the Federal Reserve Bank of Philadelphia.[25]

Based on those factors, Willamette estimated that Streck's terminal growth rate was 4.5 percent. At trial, Willamette analyst Robert Reilly explained that the 4.5 percent terminal growth rate assumes that Streck is going to revert back from growing at a super normal growth rate to growing no faster than inflation plus real growth in the economy.[26]

As Reilly stated:

> Streck then goes from sprinting to jogging on a treadmill. They just stay in place. They're not getting any bigger than their competitors. They're not getting any bigger than the industry. They're not getting any bigger than the economy. They just start jogging in place on a treadmill, they're going to grow at about 4½ to 5 percent per year.

The 4.5 percent terminal growth rate was a "downward biased assumption" because Streck had been reporting consistently increasing profit margins and the projected long-term growth rate was half of the industry's historical growth rates.[27]

The Court found that the Willamette long-term growth rate assumption was similar to conclusions reached in *Ferolito v. Arizona Beverages USA LLC* ("*Ferolito*"), No. 004058-12, 2014 WL 5834862 (N.Y. Sup.) (N.Y. Oct. 14, 2014).[28]

In *Ferolito*, the court found that the plaintiff expert's use of a 4.5 percent terminal growth rate was appropriate and even overly conservative because it assumes the company will grow based on the expected inflation rate plus real growth in gross domestic product.

In contrast, the GAF analyst predicted growth from 2020 forward would immediately fall off to 3 percent and remain at 3 percent in perpetuity. Had GAF used a 4.5 percent growth rate rather than a 3 percent growth rate, its valuation under the discounted cash flow ("DCF") method would have increased by $65 million.[29]

At trial, the GAF analyst attributed this decrease in the Streck growth rate to 3 percent based on the following factors:[30]

> So, I started with, you know, I did consider the macroeconomic factors, and I won't rehash that. But in addition to that, also looked at the company specific factors. So those would normally include things like, okay, well, how can the company actually grow in the future. One way might be to increase market share. Well, that's not very likely because the company already has, you know, it's the market giant . . . Another way to potentially-you know, another aspect of company growth I looked at was, okay—and we're talking about growth from starting in 2020 and going forward. Well, at the end of 2019, 30% of their business is tied to patents in the hematology control business that expire. . . .
>
> And then, last, we have the issue, and it's come up before, with respect to BCT, you know, that line of business. It has 95% margins and it's not protected by patents.

At trial, it was noted that the GAF analyst listed nearly the same factors he considered in selecting his company-specific risk factor applied in the MCAPM. In effect, the GAF analyst admitted to double-counting risk in the selection of the long-term growth rate and the company-specific risk factor.

The GAF analyst had previously testified in *Charron v. Sallyport Global Holdings, Inc.*,[31] that using the same risk factors to lower projections and justify company-specific risk is "double-counting."[32]

Selection of Equity Size Premium

It is generally accepted that, based on empirical observation, small companies are a greater investment risk than larger companies and, therefore, smaller companies have a greater cost of capital than larger companies.[33] In other words, there is a significant (negative) relationship between size and historical equity returns. The *Duff & Phelps Valuation Handbook*—now the Cost of Capital Navigator database website—is a common reference source for the size premium risk adjustment.

The *Valuation Handbook* provides empirical evidence of the size premium phenomena. The *Valuation Handbook* defines the size premium as the difference between actual historical excess returns and the excess return predicted by beta (referred to as the "CRSP size premium").

Both GAF and Willamette used the Duff & Phelps CRSP size premium study to select an equity size premium to apply in its respective MCAPM equity cost of capital model. The difference in the equity size premium selection between GAF and Willamette was approximately 150 basis points.

On one side, the selection of the micro-cap premium of approximately 3.9 percent was used. On the other side, the selection of the eighth decile size premium of approximately 2.4 percent was used.

Willamette applied the CRSP size premium data associated with companies valued between $636 million and $1.055 billion.[34]

In order to avoid the circular issue of selecting a size premium based on the resulting income approach method conclusion, Willamette based its CRSP size premium selection on its market approach, GPTC method, conclusion of value.

GAF applied a CRSP size premium associated with companies valued between $2.4 million and $632.8 million. The "micro-cap" category encompasses the 9th and 10th deciles of the Size Premia Study.[35]

To rebut this selection, at trial, Reilly testified that the 10th decile includes "noise" in the form of small, nonprofitable companies.

CRSP 10th decile companies exhibiting the most noise comprise the Duff & Phelps 10th decile subclassification 10z—the lower quarter of the 10th decile.

According to James Hitchner in *Financial Valuation and Litigation Expert*, "It's important to note that 80 percent of the companies in decile category 10b are from 10z. As such, let's focus on 10z. At the 50th percentile of 10z the operating margin is –1.11 percent. Yes, on average, these companies are losing money. At the 25th percentile the operating margin is –21.27 percent. Furthermore, 62 percent of the companies in 10z are from only three industry sectors: financial services, technology, and healthcare."[36]

The distressed company issue can be seen through analysis of the 10th decile subcategories of 10y and 10z.[37]

In *Ryan*, the Court found that all offers received for Streck through the Project Blizzard process would have placed the company in the 9th decile, not the 10th. In fact, if the GAF analyst had used his guideline merged and acquired company method valuation based on Project Blizzard pricing indications, he would have concluded Streck fell into the 9th decile.

According to the Court, the inclusion of the 10th decile by the GAF analyst was intended to lower his valuation for Streck.[38]

At trial, the GAF analyst claimed that he also used another methodology to determine Streck's size premium. However, this other methodology did not appear in any GAF expert report prepared in *Ryan*.[39]

This other methodology was based on the application of the *Duff & Phelps Risk Premium Report*. The *Duff & Phelps Risk Premium Report* can be used to develop a size-related risk premium based on a regression model.

Upon redirect examination at trial, Willamette demonstrated how the additional methodology, in the instant case, was not reliable. For example, using the selected "guideline companies" for comparison purposes, Willamette demonstrated how GPTC companies with market value of equity greater than $1 billion could yield an equity size premium estimate in the CRSP 10th decile range using the GAF methodology.

The difference, using publicly traded company Abaxis, Inc. ("Abaxis"), as an example, is observable by treating a CRSP 7th decile company as a 10th decile company based on the *Duff & Phelps Risk Premium Report* methodology.[40]

According to CRSP 7th decile statistics, Abaxis had an equity size risk premium of 1.94 percent based on the 2014 *Valuation Handbook*.

In contrast, the *Duff & Phelps Risk Premium Report* methodology regression model provided a size premium estimate for Abaxis of approximately 5.80 percent.

Exhibit 2 provides the analysis of Abaxis as of October 29, 2014.

Exhibit 2
Size Risk Premium Attributed to Abaxis, Inc.

Financial Fundamental	Abaxis, Inc., Financial Fundamental $MM	Regression Equation Variables		Equity Risk Premium over CAPM
		Constant	Coefficient	
Latest 12 Months Book Value of Equity	197	9.22%	-1.79%	5.11%
Latest 12 Months Total Asset Value	227	10.57%	-1.94%	6.01%
5-Year Average EBITDA	27	8.95%	-1.92%	6.20%
Latest 12 Months Revenue	176	9.41%	-1.57%	5.89%
			Mean Indication	5.80%
Abaxis, Inc., Market Value of Equity as of October 29, 2014	1,119			
Duff & Phlelps, 2014 *Valuation Handbook* , CRSP 7th Decile Indication				1.94%

CAPM = Capital asset pricing model
Sources: As indicated and S&P Capital IQ database.

The Court concluded that the GAF analyst's "explanation" of how he utilized this other methodology was convoluted and not credible.[41]

Had GAF applied the size premium for the 9th decile, and held all other factors equal, its valuation under the DCF method would have increased by $59 million.[42]

Because of the rounding convention used for the MCAPM cost of equity model presented in the Willamette report, the use of the ninth decile or the eight decile did not change its MCAPM cost of equity model conclusion.

Unsystematic Risk Premium

The unsystematic equity risk premium component is sometimes applied by analysts. The decision to apply the unsystematic equity risk premium should be well supported by the facts and circumstances of the subject analysis.[43]

This component is used to incorporate risk that is specific to the subject investment—for example, lack of management talent, potential labor issues specific to the subject company, potential of losing a key client or key personnel, and/or potential cost/risk not identified in financial projections, and so forth.

One argument against applying the unsystematic equity risk premium is that capital market theory suggests that unsystematic equity risk can be diversified away if an investor holds a well-diversified and large portfolio of common stocks.

In general terms, the higher the identified company-specific risks, the higher the percentage premium applied. At trial, Willamette explained that determining the risk premium involves the judgment of the valuation expert. Willamette applied a 0.5 percent company-specific risk premium based on its analysis of Streck, including its level of customer concentration.[44]

What might be considered a weakness of Streck could, in turn, be considered a strength of Streck's business due to its long-term contractual relationships.

As of October 2014, Streck had long-term contracts in place with its most important customers.[45] For example, Sysmex, Streck's largest customer, had a six-year contract that ran through July 2020 and could only be terminated after July 27, 2020.[46]

Sysmex, which purchased Streck's hematology controls and accounted for approximately 30 percent of Streck's revenue, was totally "dependent" on Streck.[47]

Another mitigating factor to consider is that, as previously discussed, Streck management admitted—and the Court found—that it prepares deliberately conservative financial projections. The history of, and managements admission of, preparing deliberately conservative financial projections suggested that Streck, as of the valuation date, presented a relatively low risk of achieving its own financial projections.

In contrast, the GAF analyst applied a 1 percent company-specific—unsystematic—risk factor to his discount rate estimate. The GAF analyst testified that a 1 percent company-specific risk factor was appropriate for the following reasons:[48]

> And now we get down to the point where there is some level of judgment involved,

> for sure, and that's the company-specific risk premium. And this is—this is a risk factor that you consider with respect to understanding, well, is-are there risks that are unique to Streck that I haven't accounted for yet. In the case at hand, based on some of the factors I've already talked about today, but customer concentration, the patents expiring, the fact that there's no patents on the BCT line of business, et cetera, I've already talked about a lot of those, I concluded a company-specific risk premium of 1 percent.

Although certain Streck patents were due to expire, Streck had a relatively full pipeline of patent applications in process. As of May 2014, Streck had 28 issued patents and 35 pending patent applications.[49]

Furthermore, at trial, Willamette argued that just because a patent is due to expire does not mean product revenue disappears overnight, or perhaps at all.

As previously discussed, the Court found that the risk factors the GAF analyst considered in selecting a company-specific risk premium were essentially the same risk factors the GAF analyst used to justify his lower projections.[50]

Failed Merger and Acquisition Sale Process

In March 2014, Streck engaged Duff & Phelps Securities, LLC, to help Streck find a company buyer through the Project Blizzard sales process. Just prior to the start of Project Blizzard, Streck had several indications of interest from potential buyers including Warren Buffet.[51]

As an anecdotal point of reference, in January 2014, Dr. Ryan reached out to Carson Wealth Advisers and requested that it provide a business enterprise value estimate. According to Carson Wealth Advisers, using a 17 times earnings before interest, taxes, depreciation, and amortization ("EBITDA") pricing multiple, Streck was valued at $850 million.[52]

Once Duff & Phelps was hired, it worked to identify potential buyers, it provided the buyers with certain financial information, and it set up meetings between Streck and the buyers. At some point, Connie Ryan eventually concluded, however, that Duff & Phelps did not have adequate experience in Streck's product markets and lost confidence in working with Duff & Phelps.

Project Blizzard ran over the course of three rounds. In the first round, 10 potential buyers submitted bids that ranged from $387 million on the low end to $625 million on the high end.[53]

None of the bids included the Streck cash and securities. As of October 2014, Streck had $76.5 million in cash and securities. The highest bidder in round one was the private equity firm GTCR. However, GTCR was not selected to move to Project Blizzard round two.

At trial, Riddle testified that it was highly unusual that GTCR was not permitted to advance to the second round.

In Project Blizzard round two, four firms advanced including Waterstreet, Carlyle, Capricorn, and Warburg Pincus. However, it appeared that Streck did not intend for Capricorn to be a serious buyer.[54]

Instead of including the round one highest bidder, Streck decided to exclude GTCR in favor of Capricorn.

In July 2014, at a Streck board of directors meeting, Dr. Ryan made his frustrations of Project Blizzard known by way of the following statement:[55]

> And in addition to that, all the money and everything that was put into it, I put right back into it. So, that's why we're here. And I own now 92% of the stock. Connie owns eight. And the Board has zero. You have nothing to lose. I have everything to lose in this decision you're making. And I want you to know that, and I think it's right that you should know it. . . . I have requested that my Trustee, Carol, and the Trustee of the Eileen Ryan Revocable Trust, which is the First National Bank of Omaha, be made part of this process. I think it's unfair when they have that much money at stake, and everything else, for them to not be included. If you don't want them included, ok, then I will have to change whatever plans I've got for going forward. . . . The decisions about the bidding process and the bidders are being made without input from approximately 92% of the total votes. . . . So you go, but I tell you, I think this is. And I talked to Jim yesterday, and I told him some of the same thing. I think there's some things wrong, and I think, I don't know how to correct them without going way beyond what this meeting is really intended for. So I thought, well, I'll just tell you very briefly where I am and what I think.

For Project Blizzard round three, three of the private equity firms submitted letters of intent—Carlyle, Waterstreet, and Warburg Pincus. Carlyle offered $590 million and proposed using leverage

of 5 times EBITDA with a reverse break-up fee of 5 percent of the purchase price.[56]

It also agreed to exclude Sysmex, Beckman Coulter, Abbott, Siemens, and any other specific hematology instrument manufacturers, to the extent Streck had any concerns, as potential buyers at such time as Streck was resold.

Waterstreet provided similar terms to Carlyle but offered $530 million.[57]

In addition, Waterstreet agreed to exclude any hematology instrument manufacturer that held a 10 percent or greater share of the worldwide market for hematology instruments. Warburg Pincus offered only $500 million in the form of $450 million in cash and $50 million in an earnout.[58]

BGLC investment banker Riddle testified that, based on his knowledge of Streck, he expected to see offers for Streck during the Project Blizzard process that were "several hundred million" dollars higher than the actual letters of intent received.[59] Riddle testified that there were three aspects to Project Blizzard process that limited the price offered, including:

1. the insistence on a reverse breakup fee,
2. the limitation on leverage implied by Streck during the process, and
3. the elimination of bidders, notably the highest and most qualified, GTCR.

The breakup fee was rather unorthodox, the leverage restriction had chilling effect on bidders, and the elimination of GTCR was highly unusual.

With regard to Project Blizzard and its pricing indications, only GAF found the Project Blizzard pricing to be prescriptive to value. In its Streck valuation, GAF based its entire merger and acquisition approach value conclusion on the Waterstreet pricing multiple from the failed sales process.

GAF was the only valuation analyst to give any weight to the failed sales process. In other words, Loop, Empire, and Willamette did not rely on the failed sales process as a direct valuation indication.

The use of a failed sales process as value indication is rather unusual. One reason the process failed was because the proceeds offered by the prospective buyers were not enough to compel the collective 92 percent owners to sell the business. While you had a willing buyer, you did not have a consensus willing seller at the Project Blizzard pricing indications.

Because the Streck fiscal year 2015 financial performance was better than its fiscal year 2015 projected performance, as of October 2014, an adjustment to the implied Project Blizzard EBITDA multiples was considered—a so-called "October Effect."

Based on this October Effect, the Carlyle offer could be adjusted to $606 million from $590 million and the Waterstreet offer could be adjusted to $544 million from $530 million.[60]

Subsequent to Project Blizzard, GTCR made a September 2014 offer to purchase Streck for approximately $675 million on a cash-free basis.[61]

At trial, the Court ruled that the GTCR offer was a legitimate offer and was an indication of a "floor" value as of October 2014.[62]

To that end, the Court ruled that the flawed and failed Project Blizzard yielded a minimum fair value estimate of Streck stock as of the valuation date.

Market Approach and Selected Pricing Multiples

GAF and Willamette both selected guideline public companies and applied guideline company pricing multiple to arrive at GPTC value indications.

As presented in Exhibit 3, Willamette analyzed Streck as compared to selected guideline companies.[63]

Streck was smaller than the GPTCs, but generally Streck was much more profitable than the GPTCs.

To select pricing multiples, Willamette considered the following factors:

1. Streck is a private company and, in general, private companies may sell at lower multiples than comparable publicly traded companies.
2. Streck is more profitable than the GPTCs.
3. Streck has consistently exceeded its projected performance and, therefore, the Streck Projected Year 1 and Projected Year 2 financial fundamentals may be understated.
4. In terms of size, based on earnings before interest and taxes ("EBIT") and EBITDA financial fundamentals, Streck is comparable to the median of the GPTC indications.
5. Noted company-specific risk factors.

One of the noted company-specific risk factors involved the Streck portfolio of intellectual property and patents that were due to expire in the next several years. However, Willamette testified that the risk associated with the Streck patent portfolio was akin to that of the guideline public companies it selected.[64]

Exhibit 3
Streck Financial Fundamentals and Selected Ratio Compared to Guideline Publicly Traded Companies

Size (LTM revenue, $000)	
Bio-Rad Laboratories, Inc.	2,153,877
Sysmex Corporation	1,773,484
Bio-Techne Corporation	357,263
Affymetrix Inc.	341,393
Luminex Corporation	224,033
Abaxis, Inc.	176,178
Streck Inc.	*104,490*

Size (LTM total assets, $000)	
Bio-Rad Laboratories, Inc.	3,467,751
Sysmex Corporation	1,886,427
Bio-Techne Corporation	862,491
Affymetrix Inc.	478,227
Luminex Corporation	330,512
Abaxis, Inc.	226,611
Streck Inc.	*118,560*

Growth Rate (projected yr. 2 revenue growth rate)	
Abaxis, Inc.	12.6%
Sysmex Corporation	10.3%
Luminex Corporation	8.3%
Streck Inc.	*9.0%*
Bio-Techne Corporation	7.5%
Bio-Rad Laboratories, Inc.	4.1%
Affymetrix Inc.	4.9%

LTM Profitability (EBIT to revenue)	
Streck Inc.	*48.6%*
Bio-Techne Corporation	47.4%
Sysmex Corporation	19.1%
Abaxis, Inc.	13.2%
Luminex Corporation	11.9%
Bio-Rad Laboratories, Inc.	6.0%
Affymetrix Inc.	-1.5%

LTM Profitability (EBITDA to revenue)	
Bio-Techne Corporation	51.6%
Streck Inc.	*51.2%*
Sysmex Corporation	25.3%
Luminex Corporation	18.7%
Abaxis, Inc.	17.6%
Bio-Rad Laboratories, Inc.	13.0%
Affymetrix Inc.	8.7%

Liquidity (current ratio)	
Bio-Techne Corporation	17.8
Abaxis, Inc.	9.8
Streck Inc.	*5.1*
Luminex Corporation	5.1
Bio-Rad Laboratories, Inc.	3.6
Sysmex Corporation	2.3
Affymetrix Inc.	2.3

Size (LTM EBITDA, $000)	
Sysmex Corporation	448,200
Bio-Rad Laboratories, Inc.	281,067
Bio-Techne Corporation	184,324
Streck Inc.	*53,542*
Luminex Corporation	41,855
Abaxis, Inc.	30,969
Affymetrix Inc.	29,827

Activity (working capital turnover)	
Streck Inc.	*5.2*
Affymetrix Inc.	3.4
Sysmex Corporation	2.6
Luminex Corporation	2.0
Bio-Rad Laboratories, Inc.	1.6
Abaxis, Inc.	1.2
Bio-Techne Corporation	0.9

Leverage (equity to total capital)	
Luminex Corporation	100%
Sysmex Corporation	100%
Abaxis, Inc.	101%
Bio-Techne Corporation	100%
Streck Inc.	95%
Bio-Rad Laboratories, Inc.	86%
Affymetrix Inc.	81%

In other words, all of the guideline companies have some intellectual property risk as patent owners and life science product manufacturers. Guideline companies enjoy patent protection, but, obviously, that protection does not last forever. Typically, life sciences companies patent new products and often use patent protection to defend products from intellectual property infringement. In Streck's management-prepared strategic plan, Streck described both "defensive" and "offensive" strategies to protect its intellectual property portfolio.[65]

At trial, GAF argued that Streck was in relative peril due to expiring intellectual property rights that served as the underpinning for the following:

1. Decreased financial projection expectations
2. Higher costs of capital
3. Selection of low GPTC pricing multiples

As presented in Exhibit 4, Willamette selected multiples slightly above the low end of the range of multiples for the guideline public companies.[66]

In selecting the relevant multiples, Willamette generally applied downward-biased pricing multiples in order not to overvalue Streck.

GAF claimed to apply the GPTC method to value Streck. However, at trial, the GAF expert ultimately concluded that none of the companies he selected compared to Streck.

With some exceptions, the guideline public companies selected by GAF were the same as (1) Willamette, (2) Empire, and (3) Loop.

Because all other valuation advisers used essentially the same GPTCs, it was somewhat unusual that GAF sought to discredit the use of the GPTC method to value Streck.

In addition to trying to discredit the GPTC method, GAF changed its application of its GPTC method between GAF Report #1 and GAF Report #2.

The change in application provided a significantly lower GAF Report #2 value conclusion than if GAF had consistently applied the GPTC method.

In GAF Report #1, GAF applied guideline EBITDA pricing multiples at the lower quartile

Exhibit 4
Willamette-Prepared Guideline Publicly Traded Company Method Summary and Conclusion

Value Measure	Streck Inc. $000	Guideline Publicly Traded Company Pricing Multiples Low	High	Median	Selected Pricing Multiple [b]	Market Value of Invested Capital $000	Equal Value Measure Weight [a]	Weighted Value $000
MVIC/ EBIT:								
Projected Year 2	60,640	13.0	26.5	18.7	14.0	848,960	0.14286	121,280
Projected Year 1	54,860	14.1	31.5	21.2	15.0	822,898	0.14286	117,557
Latest 12 Months	50,808	18.0	27.1	23.9	19.0	965,352		
MVIC/EBITDA:								
Projected Year 2	62,782	7.8	14.8	13.8	11.0	690,598	0.14286	98,657
Projected Year 1	56,940	8.8	17.2	14.7	12.0	683,284	0.14286	97,612
Latest 12 Months	53,542	10.8	22.6	17.3	13.0	696,050	0.14286	99,436
MVIC/Revenue:								
Projected Year 2	120,712	1.3	5.9	2.8	5.5	663,918		
Projected Year 1	110,729	1.3	6.4	3.0	6.0	664,374	0.14286	94,911
Latest 12 Months	104,490	1.4	8.5	3.2	7.0	731,429	0.14286	104,490
							1.00000	
Indicated Fair Value of Invested Capital (noncontrolling level of value basis)								733,942
Indicated Fair Value of Invested Capital (rounded) [b]								771,000

MVIC = Market value of invested capital
[a] We excluded the high and low indication of value.
[b] Guideline company multiples are calculated on a noncontrolling level of value basis. Because we are estimating a fair value, and fair value is on a controlling level of value basis, we added a 5 percent owership control price premium to the noncontrolling level of value indication.

indication. In GAF Report #2, a valuation that was as of three months later than GAF Report #1, GAF applied GPTC pricing multiples that were at the lowest GPTC pricing indication. In the three months from July to October, GPTC pricing multiples had increased and Streck financial performance also increased.

The change in application methodology resulted in a value decrease of approximately $172 million, holding all else equal.[67]

With respect to the guideline merged and acquired company ("GMAC") method, Willamette prepared an analysis by selecting guideline transactions. GAF prepared an analysis that relied on the Project Blizzard pricing only. The GAF analysis did not include the GTCR offer in September, just after Project Blizzard ended.

The Court found that the GAF GMAC method appeared to reflect the report's downward bias.

Tax Pass-Through Premium Consideration

There are several benefits of tax pass-through entity ownership. According to *Business Valuation and Federal Taxes: Procedure, Law and Perspective*, a few of the major benefits of owning a tax pass-through ownership interest include the following:

> Income is subject to only one level of taxation at the individual shareholder level, with no double taxation. C corporations can accumulate earnings, paying income tax only at the corporate level, and undistributed earnings are not subject to shareholder-level taxation.
>
> Owners of the pass-through entity receive an increase in the basis of the shares to the extent that taxable income exceeds distributions to shareholders. In other words, income retained by the S corporation adds to the tax basis of the

shareholder stock, reducing the shareholder's capital gain upon sale. This requires some analysis of the investment horizon of buyers.

A buyer may pay more for the increased tax savings available to S corporations, if he can receive a step-up in basis. For example, the sale of the entire business may be treated as an asset sale under [Internal Revenue Code] section 338, which increases the buyer's basis.

The buyer of C corporation stock generally realizes future depreciation and amortization based on the tax basis of the underlying assets. However, all else being equal, the buyer will be willing to pay more for an S corporation business in which assets receive a step-up in basis, because the buyer's effective future income taxes will be reduced.

Further, pass-through entity owners receive proceeds upon sale that are taxed only once. Gains on sale of assets by a C corporation are taxed at the corporate level, and then distributions are taxed again at the shareholder level. Likely exit strategies therefore become an important consideration for valuation.[68]

Because the subject interest represented an interest in a tax pass-through corporation, and one of the primary economic benefits is the elimination of double taxation, the Streck distribution history was relevant. To that end, Streck had a history of paying distributions in excess of its tax pass-through shareholder tax obligations.

All Willamette-prepared Streck value conclusions—based on the DCF method, GPTC method, and the GMAC method—provided a C corporation equivalent value. Because Streck is not a C corporation, but has elected to be taxed as an S corporation, it was necessary to adjust the values determined by these three valuation methods by what is referred to as an "S corporation premium."[69]

Both Willamette and GAF applied an S corporation premium to determine the Streck value.[70]

To support its S corporation premium selection, Willamette calculated the S corporation premium using four different methodologies:

1. The S corporation economic adjustment multiple ("SEAM") analysis
2. Empirical research as provided by the Erickson and Wang Study
3. The S corporation methodology as used in *Delaware Open MRI Radiology Associates v. Howard B. Kessler* ("*Kessler*")[71]
4. The methodology presented in the Fannon and Sellers book, *Taxes and Value, The Ongoing Research and Analysis Relating to the S Corporation Valuation Puzzle*[72]

These four methodologies provided a range of S corporation premiums of 12 percent to 17 percent. Based on these methodologies, Willamette concluded that a 14 percent premium reflects the economic benefits attributable to Streck's elected income taxation status as an S corporation.

The 14 percent price premium was supported by the S corporation premium conclusions based on the application of the *Kessler* decision methodology and the SEAM analysis methodology.

Applying the S corporation premium to the indicated value of Streck resulted in an $817 million valuation conclusion.[73] This value conclusion was prior to adding cash and marketable securities of $76.5 million.[74]

GAF applied an S corporation premium to only the values derived from the DCF method and the GPTC method. Because GAF selected an average price indication from the failed Project Blizzard as a value indication for Streck, it did not apply an S corporation premium to its GMAC method value estimate.[75]

To estimate an S corporation premium to apply to the DCF method value estimate and GPTC method value estimate, GAF relied exclusively on its SEAM method calculation—the only method presented by GAF.

GAF calculated the same S corporation premium as Willamette.[76] However, instead of applying the 14 percent premium, GAF cut the premium in half and applied a 7 percent S corporation premium. According to its report, GAF cut the premium in half based on the following factors:

1. The S corporation election was at risk.
2. There were limited potential buyers of an S corporation.
3. Tax laws might change.
4. Streck might not be profitable.

At trial, the GAF analyst discussed these factors.[77] The GAF analyst testified that there was a risk during 2014 that the Obama Administration would change the tax code.

At trial, the GAF analyst testified to the following:[78]

> Q. All right. Do you recall any discussions occurring at that time that went into your analysis at least that would suggest if the Republican house was interested in tax increase in October of 2014?

A. I believe they—I believe-and who knows; right? If this is a risk, it's not a for sure. I believe there was a lot of articles that I have read where there might have been a tradeoff that said, hey, if we can get these corporate tax rates down to where they think they need to be, we'll maybe give a little bit on the high end for individuals, which is a double whammy as it relates to—you know, both of those are going the opposite directions, which it actually lowers or eliminates the SEAM adjustment altogether.

Q. So it's your opinion, who knows; right?

A. It's a risk. It's a risk that a C Corporation doesn't have.

The GAF analyst then testified that there had been "discussions" at Streck about converting to a C corporation.[79] But there was no evidence of such discussions presented at trial.

Willamette also rebutted the methodology, or the lack thereof, employed by GAF for reducing the S corporation premium in half.[80]

Reilly testified that "[t]here's simply no quantitative variable for making a probability adjustment. It's just not in any of these models."

An article mentioned by GAF at trial indicated that the SEAM model assumed certain factors, and could be adjusted if those factors were not present. However, the article did not describe a quantitative means for making the adjustment, and it certainly did not describe a means of arbitrarily chopping the premium in half based on an unsupported potential change in the U.S. Tax Code.

The GAF reduction in the S corporation premium, all other things being equal, reduced its valuation by $32 million.[81] The arbitrarily halving of the S corporation premium reflects GAFs downward bias.

Pricing Evidence and Valuation Conclusion

At trial, GAF accused Willamette of concluding on a value that was "off the charts." However, pricing for Streck, based on Project Blizzard, and value indications based on generally accepted valuation methodology provided a rather wide range chart.

Project Blizzard and the subsequent GTCR offer provided EBITDA pricing multiples of just above 8 on the low end and nearly 13 on the high end. The GPTC business enterprise to EBITDA pricing multiples, provided by pricing multiples presented in the GAF Report #2 analysis, provided a range from 9.3 times EBITDA to 28.4 times EBITDA.

Figure 1 provides an illustration of how the GPTC business enterprise to EBITDA pricing multiples aligned with the (1) implied GAF business enterprise to EBITDA pricing multiple and (2) implied Willamette business enterprise to EBITDA pricing multiple.

As can be observed in Figure 1, the only analysis that did not fit within the GPTC pricing multiple range was the implied GAF Report #2 analysis. The lowest GPTC business enterprise to EBITDA pricing multiple was 9.3, and the GAF implied business enterprise to EBITDA pricing multiple was 9.06.

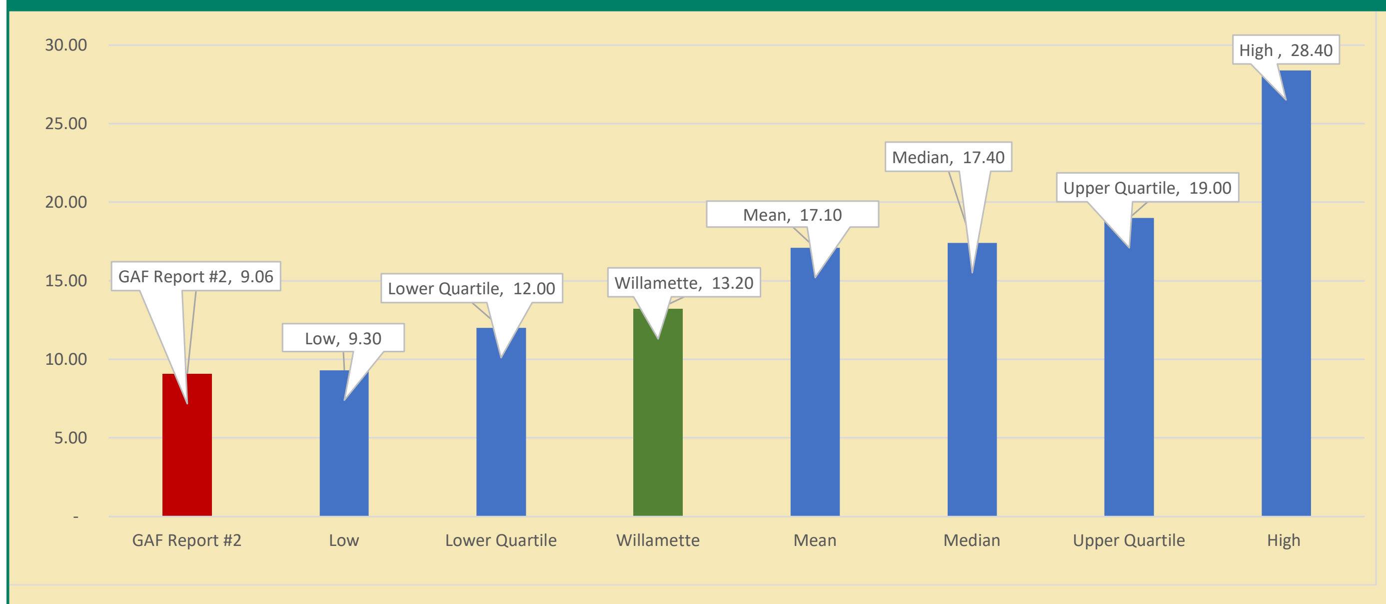
Court Findings in the Ryan Order

GAF valued Streck at $505 million, on a cash-free basis.[82]

That value was less than the Project Blizzard value indications after accounting for the improved Streck financial performance as of October 2014. The GAF value conclusion was approximately $145 million lower than the midpoint of the September 2014 GTCR price range offer to buy Streck.

In *Ryan*, the Court ruled that the defendant had failed to meet its burden of establishing a fair value

Figure 1
Business Enterprise to EBITDA Pricing Multiples Comparison
Using GAF Report #2 Pricing Multiples



of its stock. According to the Court, the GAF analyst valuation work reflected a downward bias in the following ways.[83]

- He disregarded already conservative management financial projections without explanation.
- He applied a size premium that was out of line with the Project Blizzard bids and inappropriately included companies in the 10th decile.
- He "double counted" by applying the same risk factors to lower projections and to justify a company-specific risk premium. This practice has been specifically identified by the *Kessler* litigation ("To judges, the company specific risk premium often seems like the device experts employ to bring their final results into line with their clients' objectives, when other valuation inputs fail to do the trick.").
- He assigned pricing multiples to Streck that were well below those of the companies he selected as being comparable for purposes of his publicly traded company analysis.
- He assigned pricing multiples to Streck that where well below those assigned by his own colleague who prepared the GAF Report #1, in spite of the fact that the valuation date for GAF Report #2 was only three months after the valuation date of GAF Report #1.
- He arbitrarily reduced the S corporation premium by half and cited "evidence" (e.g., the risk of an Obama Administration tax increase) which did not exist to support this reduction.

Because of the noted issues, the Court concluded that GAF applied variables designed to lower its valuation of the fair value of Streck and Dr. Ryan's shares.[84]

Therefore, the Court rejected the GAF conclusion. By rejecting the GAF conclusion, the Court accepted the Willamette conclusion in full—a conclusion that was $312 million higher than the GAF conclusion prior to prejudgment interest.

Summary and Conclusion

This discussion presented an insider perspective on the largest valuation-related judicial decision in Nebraska state court history. This judicial decision is also considered to be second largest forced buyout in U.S. history.

The *Ryan* matter was essentially a dispute between family members that involved the fair value valuation of Streck, a multinational life sciences business. The *Ryan* decision is a valuation heavy—that is, many dispute-related valuation disagreements between experts—shareholder oppression matter. Because the experts were more than $300

million apart in the business enterprise value conclusion of Streck, something had to give.

In *Ryan*, two well-known valuation firms provided expert testimony. The firms generally applied the same methodology, but had differences of opinion related to the following:

1. Financial projections
2. Expected long-term growth rate
3. Selection of an MCAPM equity size-premium
4. Selection of an unsystematic company risk premium
5. Relevance of a failed merger and acquisition sales process
6. Application and selection of guideline company pricing multiples
7. Application of a tax pass-through entity valuation adjustment

In the end, the Court accepted one valuation conclusion, in full, and rejected the other valuation conclusion because it was found to be unreliable.

The Court concluded the defendants' valuation expert provided a biased work product. The following discussion presents a summary of the dollar-impact of the bias, as summarized by the Court:[85]

- Had the defendants' analyst used management projections instead of creating his own projection, the DCF valuation would have increased by $10 million. The downward biased projection also affected the GPTC method. However, that impact was not quantified for the Court.
- Had the defendants' analyst used the 9th size decile instead of the micro-cap size category, the DCF valuation would have increased by $59 million.
- Had the defendants' analyst used a 4.5 percent terminal growth rate rather than a 3.0 percent terminal growth rate, the DCF value would have increased by $65 million.
- Had the defendants' analyst not arbitrarily cut the S corporation premium in half, his valuation would have increased by $32 million.
- Had the defendants' analyst used consistent methodology between the first Streck valuation report and the second Streck valuation report, the GPTC method would have increased by $172 million.

All of the Court findings related to the dollar impact of analyst bias were calculated in isolation. In other words, certain of the Court findings, when taken together, have a more significant impact on value than in isolation.

Having worked on *Ryan*, and having worked on dispute-related matters like *Ryan*, it is typically an advantage to the valuation analyst when the legal team provides:

1. unfettered access to case documents in a document management software platform,
2. enough time so that court deadlines do not impair the quality of the analysts' work, and
3. an engaging process whereby in-person meetings and phone calls are held on a regular basis.

If all three advantages are present, the valuation analyst and the legal team should be able to find common ground and present their best case to the trier of fact.

Notes:

1. In the matter of the Wayne L. Ryan Revocable Trust, Steven Ryan and First Nebraska Trust., as co-trustees for the Wayne L. Ryan Revocable Trust, and Steven Ryan, as personal representative of Dr. Wayne L Ryan, deceased v. Constance "Connie" Ryan and Streck, Inc., Case No. CI 14-1684 ("Ryan"), opinion and order filed on July 23, 2019 ("Order").
2. Andrew Maloney, "Chicago Attorney Led Legal Effort in $725M Forced-Buyout Dispute," Lawbulletinmedia.com (September 10, 2019).
3. Order, 10.
4. Ibid., 5.
5. The Wayne L. Ryan Revocable Trust, Carol Ryan as trustee for the Wayne L. Ryan Revocable Trust, and Dr. Wayne L. Ryan, an individual, Plaintiffs v. Constance "Connie" Ryan and Streck, Inc., Defendants Complaint, filed October 30, 2014 ("the Complaint").
6. Order, 2.
7. Ibid., 3.
8. Ibid.
9. Ibid., 1, .60–61, and 73–74.
10. We note, we have included the name Empire Valuation Consultants, LLC, as it appears in the Order. Empire did not provide court testimony in the Ryan matter.
11. Plaintiff's counsel at Holland & Knight included Richard Winter, Michael Zdeb, and Maureen Schoaf. In addition to Holland & Knight, Marnie A. Jensen of Husch Blackwell, LLP., along with her colleagues at Husch Blackwell, were

important members of the plaintiff legal team in Ryan.

12. The name of the global advisory firm, and the defendants' expert, is provided in the Order on page 47.
13. Ibid., 9.
14. Ibid.
15. Ibid.
16. Ibid.
17. Ibid., 4.
18. Ibid., 13.
19. Ibid.
20. Ibid., 14.
21. Ibid., 29.
22. Ibid., 32.
23. Ibid., 10.
24. Ibid., 14.
25. Ibid., 32.
26. Ibid.
27. Ibid., 33.
28. Ibid.
29. Ibid., 48.
30. Ibid., 49.
31. Charron v. Sallyport Global Holdings, Inc., No. 12cv6837, 2014 WL 7336463 at *10 (S.D.N.Y. Dec. 24, 2014).
32. Ibid., 52.
33. Kevin M. Zanni, "Equity Size Premium Observations and Delaware Fair Value, Part I of II." NACVA quickreadbuzz.com online publication (November 7, 2019): 4.
34. Order, 36.
35. Ibid., 49.
36. Jim Hitchner, "How to 'Rig' a Valuation: The Discount Rate," *Financial Valuation and Litigation Expert* (February/March 2013).
37. Kevin M. Zanni, "Cost of Capital Theory and Application for Fair Value Controversy Matters." *Willamette Management Associates Insights* (Autumn 2017): 84.
38. Order, 50.
39. Ibid.
40. Abaxis, Inc., is no longer publicly traded. It now operates as a subsidiary of Zoetis, Inc. At the time it was acquired in 2018, Abaxis had a market capitalization of $1.9 billion.
41. Order, 50.
42. Ibid.
43. Zanni, "Equity Size Premium Observations and Delaware Fair Value, Part I of II," 3.
44. Order, 37.
45. Ibid., 12.
46. Ibid., 12.
47. Ibid.
48. Ibid., 51.
49. Ibid., 7.
50. Ibid., 52.
51. Ibid., 15.
52. Ibid.
53. Ibid., 18.
54. Ibid., 19.
55. Ibid., 19–20.
56. Ibid., 20.
57. Ibid., 21.
58. Ibid.
59. Ibid., 25.
60. Ibid.
61. Ibid., 24.
62. Ibid., 25.
63. Ibid., 39.
64. Ibid.
65. Ibid., 7.
66. Ibid., 40.
67. Ibid., 54.
68. David Laro and Shannon Pratt, *Business Valuation and Federal Taxes, Procedure, Law and Perspective*, 2d ed. (John Wiley & Sons, 2011), 104, 105.
69. Order, 45.
70. Ibid.
71. Delaware Open MRI Radiiology Associates v. Howard B. Kessler, et al., 898 A.2d 290, 339 (Del. Ch. 2006).
72. Nancy J. Fannon and Keith Sellers, *Taxes and Value: The Ongoing Research and Analysis Relating to the S Corporation Valuation Puzzle* (Portland, OR: Business Valuation Resources, April 2015).
73. Order, 46.
74. Ibid.
75. Guideline merged and acquired company method is sometimes referred to as the guideline transaction method.
76. Order, 57.
77. Ibid.
78. Ibid.
79. Ibid.
80. Ibid., 58.
81. Ibid.
82. Ibid., 59.
83. Ibid., 66.
84. Ibid.
85. Ibid., 58–59.

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