

Willamette Management Associates

Thought Leadership in Valuation, Damages Analyses, and Transfer Price Analyses

Willamette Management Associates consulting experts and testifying experts have achieved an impressive track record in a wide range of litigation matters. As independent analysts, we work for both plaintiffs and defendants and for both taxpayers and the government. Our analysts have provided thought leadership in breach of contract, tort, bankruptcy, taxation, family law, and other disputes. Our valuation, damages, and transfer price analysts are recognized for their rigorous expert analyses, comprehensive expert reports, and convincing expert testimony. This brochure provides descriptions of some recent cases in which we provided expert testimony on behalf of the prevailing party.

Transfer Pricing Testifying Expert Services

In the matter of *Amazon.com, Inc. & Subsidiaries v. Commissioner* (148 T.C. No. 8 (2017)), the U.S. Tax Court found in favor of the taxpayer plaintiff. The case involved a 2005 cost sharing arrangement that Amazon entered into with its Luxembourg subsidiary. Amazon granted its subsidiary the right to use certain pre-existing intangible property in Europe, including the intangible assets required to operate Amazon's European website business. The Tax Court held that (1) the Service's determination with respect to the buy-in payment was arbitrary, capricious, and unreasonable; (2) Amazon's CUT transfer price method (with some upward adjustments) was the best method to determine the requisite buy-in payment; (3) the Service abused its discretion in determining that 100% of technology and content costs constitute intangible development costs (IDCs); and (4) Amazon's cost-allocation method (with certain adjustments) was a reasonable basis for allocating costs to IDCs. Robert Reilly, a managing director of our firm, provided expert testimony on behalf of taxpayer Amazon in this Section 482 intercompany transfer pricing case.



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Income Taxation Testifying Expert Services

On February 21, 2017, the U.S. Court of Federal Claims dismissed (with prejudice) the complaint filed by plaintiff Washington Mutual, Inc., against the United States (Nos. 08-321T, 08-211T). The taxpayer plaintiffs were seeking a refund of at least \$149 million in certain federal taxes paid by H.F. Ahmanson & Co. (“Ahmanson”) during several tax years in the 1990s, based upon the abandonment loss and amortization deductions available under the Internal Revenue Code. The case involved the fair market value determination of the regulatory right to open deposit-taking branches in certain states other than California (“branching rights”), the contractual approval right to treat the goodwill created by certain acquisitions as an asset for regulatory accounting purposes (“RAP rights”), and certain other intangible assets. Curtis Kimball, a managing director of our firm, critiqued the valuation report presented by the plaintiff’s valuation expert and provided rebuttal expert testimony on behalf of the U.S. Department of Justice regarding the valuation of branching

rights and RAP rights intangible assets. The Claims Court dismissed the plaintiffs’ tax refund claims.

Condemnation Proceeding Testifying Expert Services

In the matter of *Town of Mooresville v. Indiana American Water Company* (2014), Willamette Management Associates was engaged by the defendant to perform a valuation analysis of the Indiana American Water Company (the “company”) retail water system located in Mooresville, Indiana. The purpose of the analysis was to assist the company in a condemnation proceeding initiated by the town of Mooresville, Indiana. Our assignment was to estimate the fair market value of the company total operating assets (as part of a going concern). The primary valuation issue in the dispute was: should all of the company operating assets (financial asset accounts, tangible property, and intangible assets) be assigned value in a condemnation proceeding? Or, should the condemnee receive the accounting book value (or regulatory “rate base”) of the tangible assets only? After a jury trial, at which Robert Reilly, a managing director of our firm, provided expert testimony, the jury’s decision favored our analysis and awarded Indiana American Water Company the value of both its tangible assets and its intangible assets.



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Family Law Testifying Expert Service

In a marital dissolution matter in 2016, the Superior Court of Arizona, Maricopa County, found in favor of the husband in the family law case *In re the Marriage of Julie Anne Bowe and Gregory James Vogel, Sr.* (No. FC2014-001952), Willamette Management Associates was engaged by Gregory Vogel, as president and owner of Land Advisors Organization (LAO), a national land brokerage business, to prepare a valuation analysis. Charles Wilhoite, a managing director of our firm, provided expert testimony. The purpose of the analysis was to assist with facilitating the property settlement aspects of the parties' marital dissolution. The primary valuation issues in the dispute were (1) the most appropriate valuation date and (2) the appropriate historical period of operating results to be relied on as a foundation for estimating the expected future earnings in a capitalization of cash flow business valuation analysis. The Court favored the Willamette positions, resulting in a judicially concluded value for LAO significantly lower than the opinion offered by the opposing valuation experts. This case is currently being appealed.

Bankruptcy Testifying Expert Services

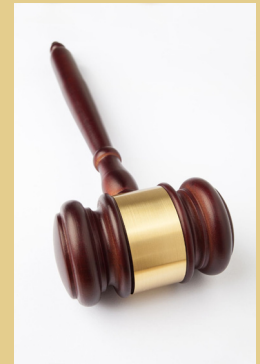
Willamette Management Associates was engaged by the proponents of a reorganization plan to prepare a declaration in the matter of *In re Plant Insulation Company* (No. 09-31347, U.S. Bankruptcy Court, N.D. Cal. 2014). Our assignment was to review the declarations of the opposing experts in this case and to offer our opinion on certain shareholder agreements related to the matter. In particular, we were asked to review a right of first offer agreement and to opine on its impact on the control, transfer, and value of common stock and warrant interests in Bayside Insulation and Construction, Inc. Following a trial, at which Willamette managing director Curtis Kimball offered rebuttal expert testimony, the U.S. Bankruptcy Court accepted the plan of reorganization proposed by the Futures Representative of the Official Committee of Creditors.



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Property Taxation Testifying Expert Services

Willamette Management Associates was engaged by the plaintiff to prepare a forensic analysis expert report for *Sandy Creek Energy Associates, LP, and Brazos Sandy Creek Electric Cooperative, Inc., v. McLennan County Appraisal District* (No. 2014-3336-4, Dist. Ct. McLennan County, Texas, August 2016). The purpose of the Willamette expert report and expert testimony was to assist the owners of the Sandy Creek coal-fired electric generating plant (the “plant”) in a property taxation dispute with the McLennan County Appraisal District (the “district”). Our assignment was to review and rebut the unit valuation expert report and testimony provided by the district’s valuation expert. One issue in the dispute was the amount of economic obsolescence associated with the plant. As of the property tax assessment date, the plant’s cost to produce electricity was significantly greater than the wholesale price of electricity. As described in the Willamette expert report, these operating conditions indicated that economic obsolescence was present in the plant. After a week-long trial, at which Willamette managing director Robert Reilly offered expert testimony, a jury decided that the fair market value of the plant was less than half of the value asserted by the district. This jury decision significantly favored the taxpayer, and it resulted in a substantial reduction in the plant’s property tax assessment.



Dissenting Shareholder Rights Testifying Expert Services

In the case, *In Re Appraisal of The Orchard Enterprises, Inc.* (No. 5713-CS, 2012 WL 2923305 (Del. Ch. 2012), *aff'd* No. 470, 2013 WL 1282001 (Del. 2013)), Willamette Management Associates was retained on behalf of the petitioners in a case where the subject of the dispute was the fair value of the Orchard Enterprises, Inc. (“Orchard”) common stock at the time the company was taken private. Orchard was a digital media services company specializing in music from independent labels with a mission to acquire distribution rights, build sales channels, and monetize these rights in new and innovative ways. The petitioners had received \$2.05 per share in the going-private transaction. At trial, Tim Meinhart, a managing director of our firm, testified that the fair value of the Orchard common stock at the time of the go-private transaction was \$5.42 per share. The court agreed with our overall conclusion that the transaction occurred at a price that was lower than the fair value of the stock. The court concluded that the common stock fair value was \$4.67 per share at the time of the go-private transaction.



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