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Compensation Adjustments in Business Valuations for Family Law Disputes

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IS A SHAREHOLDER COMPENSATION REASONABLENESS ANALYSIS IMPORTANT?

When a closely held company is part of the marital estate in family law disputes, one spouse often has a disproportionate level of control over the operations of the business. The in-spouse may be the sole owner or hold a controlling ownership interest. In this scenario, the in-spouse may have total control over setting compensation. The in-spouse has no incentive to set compensation at a fair, market-based level, and therefore will likely structure compensation to minimize income taxes or satisfy other self-benefiting goals.

When the subject company is structured as an S corporation, a controlling shareholder/executive may receive little or no income in the form of a salary. A controlling shareholder/executive of an S corporation may take compensation in the form of S corporation income distributions. By structuring compensation in this manner, the shareholder may avoid various employment taxes typically applicable to a salary. Although this may be of interest to the Internal Revenue Service, it is likely that below-market compensation will go unchecked prior to the scrutiny of a marital dissolution proceeding.

When the subject company is structured as a *C corporation*, a controlling shareholder/executive may receive compensation in the form of a salary above and beyond market-based indications. The shareholder/executive of a C corporation would be incentivized to take an outsized portion of compensation as salary because such payments are tax-deductible expenses for a C corporation. By taking compensation as a salary, a controlling shareholder may avoid paying taxes at the corporate and shareholder level.

The in-spouse may also alter compensation for other purposes. The in-spouse may receive compensation below a market level if the spouse is (1) attempting to grow the company and reinvesting cash flow or (2) planning to sell the company and wishing to increase apparent cash flow. The in-spouse may receive compensation above

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a market-based level if a marital dissolution was anticipated and the spouse wishes to decrease the apparent cash flow of the company.

There are a number of motivations for a controlling shareholder/executive to set the salary at a level significantly below or above what the market indicates as reasonable. Therefore, it is important to analyze the shareholder/executive's compensation over a number of years and make normalization adjustments as necessary for the purpose of estimating a reasonable level of long-term, sustainable earnings and cash flow.

Eight reasonable compensation factors are frequently referenced by the IRS.

FACTORS TO CONSIDER WHEN DETERMINING WHETHER COMPENSATION IS REASONABLE

Determining whether shareholder/executive compensation is reasonable in a family law dispute is similar to determining whether shareholder/executive compensation is reasonable in US Tax Court cases. When determining whether compensation is reasonable, there are eight factors frequently referenced by the Internal Revenue Service and valuation analysts:

(1) The employee's particular qualifications for the job

(2) The nature, scope, and extent of the work actually performed by the employee

(3) The size and complexity of the subject business enterprise

(4) The economic conditions and background of the industry involved

(5) The subject company's dividend history

(6) Comparable salaries paid in the industry

(7) The compensation paid to the subject company's other employees

(8) The subject employee's prior compensation

Additionally, a valuation analyst should consider the returns that the subject company receives, after the payment of compensation, relative to its peers. If a controlling shareholder receives a high level of executive compensation, and the company reports a return on equity or a return on revenue that is below its peers, this should be a red flag that the in-spouse may be taking compensation above a market-based level. Alternatively, if a controlling shareholder receives little to no executive compensation, and the company reports a return on equity or a return on revenue greater than its peers, this should be a red flag that the in-spouse may be taking compensation that is below a market-based level.

SHAREHOLDER COMPENSATION IS NOT REASONABLE, NOW WHAT?

Determining reasonable compensation is particularly important in family law matters. This is because the level of compensation affects both (1) the value of the business held by the marital estate and subject to property division and (2) the level of spousal support paid by the in-spouse. For the issue of valuing the subject company, a valuation analyst will have to first determine a reasonable, market-based level of compensation for the shareholder/executive, and then make the proper adjustments to the company's historical earnings and cash flow by adjusting compensation to a reasonable level. For the issue of spousal-support payment calculations, it is important to understand the relationship between the community property asset value and future income to the in-spouse.

If normalized compensation is adjusted upward, normalized cash flow will decrease.

Spousal Support Payments and Double Dipping

For the purposes of this article we focus primarily on the value of the closely held business owned by the marital estate. However, we also address the issue of "double dipping" in family law matters. The concept of double dipping refers to the double counting of a marital asset, once in the property division and again in the spousal support award. Double dipping can produce two opposite results.

If normalized compensation is adjusted downward for business valuation purposes, normalized cash flow will increase, and the value of the subject company will increase. If actual compensation is then used to determine spousal support payments, the support payments will occur based on the higher level of compensation. The argument against double dipping in this scenario is that the in-spouse is disadvantaged because the payment for the out-spouse's share of the community property business is increased, while the support payments are still made based on an elevated level of compensation. An argument against double dipping is that once excess income is added back in the business valuation process, it becomes an asset, and should no longer be considered for determining future personal income.

If normalized compensation is adjusted upward for business valuation purposes, normalized cash flow will decrease, and the value of the subject company will decrease. If actual compensation is then used to determine spousal support payments, the support payments will occur based on the lower level of compensation. The argument against double dipping in this scenario is that the out-spouse is disadvantaged because the payment for the out-spouse's share of the community property business is decreased, while the support payments are still made based on a depressed level of compensation.

One can analyze databases that report compensation statistics.

The issue of double dipping is not black and white. Court decisions have presented differing opinions on the issue. The main argument against double dipping is that either the in-spouse or out-spouse will be disadvantaged if compensation normalization adjustments are used for community property division, but not spousal support payments. In *Grunfeld v. Grunfeld*, the New York Court of Appeals stated,

> *Thus, in valuing and distributing the value of the [husband's] business, the Supreme Court converted a certain amount of the [husband's] projected future income stream into an asset. However, the Supreme Court also calculated the amount of maintenance to which the [wife] was entitled based on the [husband's] total income, which must have included the excess earnings produced by his business. This was improper. Once a court converts a specific stream of income to an asset, that income may no longer be calculated into the maintenance formula and payout.*[1]

However, there are also arguments that normalizing compensation for community property division purposes, but not spousal support purposes, does not present a problem. One argument is that the business valuation process and spousal support payment determination are completely separate issues. Determining the fair market value of a business may appropriately involve the normalization of owner's compensation. At the same time, some argue that spousal support payments should be based on the actual income available to the marital estate.

For example, in *Steneken v. Steneken*, the New Jersey Supreme Court stated:

> *We find no inequity in the use of the individually fair results obtained due to the use of an asset valuation methodology normalizing salary in an ongoing close corporation for equitable division purposes, and the use of actual salary received in the calculus of alimony. The interplay of those calculations does not constitute double counting.*[2]

Another argument is that the complex process of business valuation involves the interaction of a number of factors, and any adjustment to normalize compensation will have a differing impact on the overall business value conclusion. For example, if a significant portion of the estimated fair market value of a community property business was based on an asset approach, the normalization of the in-spouse's compensation may have little to no effect on the value conclusion. For this reason, some may argue that the issues of property division and spousal support payments should be considered separately.

Determining a Reasonable Level of Compensation

Determining a reasonable level of compensation should answer the following question: If the shareholder/executive were to leave the company, what level of compensation would be required to retain the services of an equally skilled individual, able to achieve the same returns, based on an arm's-length compensation negotiation?

The analyst can attempt to answer this question by analyzing various databases that report compensation statistics and information. A detailed list of some of the key sources for compensation information is presented in the *Sources of Compensation Data* section at the end of this article.

In analyzing the data presented in the various compensation data resources, the valuation analyst should take care to make sure to be (1) using the most relevant data and (2) applying the data correctly.

Cautions When Using Compensation Data

Compensation normalization adjustments can materially affect the appraised value of a closely held company. Therefore, valuation analysts must be careful when using databases and market information to determine a normalized level of compensation. The following addresses some key considerations when using the data summarized in the *Sources of Compensation Data* section.

- What is the geographic focus of the subject company compared to the data source? Executive compensation can vary based on location. Many of the compensation data sources provide geographic location as a refining factor. However, it is important to understand how large the relevant geographic area is, and the sample size of companies used to determine the market-based data in that geographic area. It is also important to consider company-specific attributes. The compensation for the CEO of a small closely held company operating in a single metropolitan area may be greatly influenced by the location of the company, whereas the location of the headquarters of a large multinational firm may not be as relevant to the CEO's compensation.

- Does the compensation data include executives being compensated by means other than salary and bonus? Are the executives included in the data receiving compensation in the form of distributions? Are the executives included in the data being granted stock options or other equity-based incentives? Is the market data for base compensation or total compensation? Does total compensation as presented in the databases include things like retirement benefits or fringe benefits?

- What is the sample size of the market-based data? Refining factors such as title, company size, and relevant geographic area are important when comparing levels of reasonable compensation. However, the analyst must make sure that the data sample size is sufficient to give a reliable indication of reasonable compensation. The median compensation of two executives at comparable companies operating in the subject company's city, with revenue within 10 percent of the subject company, may not produce as meaningful a data set as the median compensation of 100 executives at comparable companies operating in the subject company's state, with revenues within 20 percent of the subject company.

- How are job titles defined, and are the duties and responsibilities similar to that of the subject shareholder/executive? The subject shareholder/executive could have the title of senior vice president of finance, but in reality have the responsibilities and compensation of a chief financial officer (CFO). Some data sources may have president and CEO grouped together as one category, while the subject company has distinctly different responsibilities and compensation for the two positions. When comparing the compensation of professional practitioners, how subspecialized is the data? If the subject shareholder is an orthopedic surgeon, reasonable compensation likely will differ materially from that of a general surgeon.

- How are the data presented in the survey or database? Medians and averages may produce significantly different indications of reasonable compensation. If defining a range of reasonable compensation, it is important to identify what the basis is. Low and high may mean something different than first quartile and third quartile.

- Does the shareholder/executive perform the tasks of multiple job titles? In a closely held business in which the in-spouse is a controlling owner, the in-spouse may perform the duties of CEO, CFO, and chief operating officer. If the in-spouse were to be replaced, would the company have to hire multiple employees? It is important to consider this when determining a reasonable level of compensation.

- Have there been significant changes to the subject industry, or the economy as a whole, since the compensation data were compiled? Market data for executives at mortgage lending businesses compiled from 2006 to 2007 may not be relevant if the marital dissolution took place after the financial crisis of 2008.

- If the in-spouse is a key person generating the majority of company sales through personal relationships, how is this considered when completing a comparative analysis based on information presented in the databases? If the in-spouse is truly unique and "unreplaceable," the analyst may also want to compare the returns of the subject company to industry-based returns, in addition to survey-based indications of executive compensation.

Hetherington v. Molinaro

Hetherington v. Molinaro[3] is an example of a case in which the industry compensation data relied on by the husband's (out-spouse) expert was not considered appropriate given the facts and circumstances of the wife's (in-spouse) position. In this matrimonial matter, the husband appealed the trial court's confirmation of two arbitration awards. The relevant arbitration award focused on setting the value and equitable distribution of a business formed by the wife. The key disagreement regarding the value of the business was the level of reasonable compensation for the wife.

Some sources may group president and CEO in one category.

During the marriage, the wife formed Hetherington Information Services, LLC (HIS) and was the sole owner. Approximately seven years after the formation of HIS, the wife ceased working for HIS and began working for another company known as AON. The job duties and responsibilities at AON were substantially the same as those at HIS. Approximately two years later, near the time of separation, the wife left AON and returned to work at HIS.

The parties agreed that an arbitrator would determine the value and equitable distribution of HIS. Given that the wife was the sole owner and key employee of HIS, the level of reasonable compensation was a key issue in determining the value of HIS. The wife's expert testified that he assessed the wife's job duties, responsibilities, experience, skill set, education, and professional affiliations and accomplishments. The expert determined that the job duties and responsibilities at HIS were similar to the wife's duties at AON. Therefore, the expert determined that the most relevant indicator of reasonable compensation for the wife's role at HIS was the salary she earned while at AON. Based on the wife's AON salary of more than $265,000, the expert concluded that a reasonable level of compensation for the in-spouse's role at HIS was $275,000.

Alternatively, the husband's expert did not consider the in-spouse's specific job duties, responsibilities, and prior salary at AON. Instead the husband's expert relied on general industry data and set reasonable compensation for the wife's role at HIS at $129,637, less than half of what the wife earned for performing similar duties at AON. The arbitrator rejected the husband's expert's use of industry data to determine reasonable compensation. The arbitrator opined that the data relied on did not accurately reflect the in-spouse's unique position, skills, experience, background, and types of services she provided. The arbitrator then accepted the wife's expert's opinion regarding both reasonable compensation and the value of HIS.

Upon appeal, the court confirmed the arbitrator's decision, and rejected the husband's claim that the arbitrator applied an absurd salary estimate for the in-spouse.

Ultimately, the husband's expert did not accurately answer the question: If the shareholder/executive were to leave the company, what level of compensation would be required to retain the services of an equally skilled individual, able to achieve the same returns, based on an arm's-length compensation negotiation? The expert instead relied on industry data without sufficient scrutiny into the specific attributes of the in-spouse's position.

Stewart v. Stewart

In *Stewart v. Stewart*[4] the industry compensation data used by the out-spouse was not considered appropriate given the facts and circumstances relevant to the subject business. In this matrimonial matter, the wife (as the out-spouse) claimed that the husband (as the in-spouse) was undercompensated in the years prior to the marital dissolution, and therefore did not fulfill his fiduciary duty to the marital community.

In this case, the subject company was a separate-property (in-spouse owned) business, and therefore not part of the community marital estate. However, the issue of compensation was still relevant given the wife's claim that the husband was undercompensated in the four years prior to the dissolution, and therefore was entitled to half of such under-compensation.

The husband's compensation as the owner of the subject company decreased over the 2008 to 2011 period. The wife argued that his compensation was below a standardized annual salary for corporate officers in the relevant industry. In the original decision, the family court found that the husband was undercompensated over the four-year period and awarded the wife half of such under-compensation.

However, this decision was appealed by the husband who argued that the family court erred when determining he was undercompensated during the marriage. The husband testified that his compensation declined, and was below the market-based compensation data, due to the fact that the general economy was in a contraction, and that his specific industry was experiencing reduced consumer demand due to technological advances.

The appeals court vacated the under-compensation portion of the trial court's award to the wife. The appeals court noted that the husband's compensation had trended downward in comparison to the fair compensation market-based benchmarks during the entirety of the marriage, and prior to any indication of a marriage dissolution.

The appeals court recognized that the husband operated in a niche industry that was subject to different risks and trends than the companies included in the market-based compensation data. The appeals court also recognized that the economic environment changed significantly over the years in question, and compensation was affected likewise.

Correctly Adjusting for Excess or Insufficient Compensation

Determining whether a compensation adjustment is warranted requires both qualitative and quantitative analysis. For example, an analyst should not only look at an executive's compensation compared to his peers, but also analyze how compensation is determined and whether the shareholder/executive has unique skills or expertise that are not readily replicable. However, once an analyst has determined that the in-spouse's compensation is not reasonable, market-based data can be a useful tool for making adjustments.

It is important to evaluate compensation closely when performing a business valuation. If the in-spouse's compensation is below a reasonable level, this can lead to an overstatement of the business enterprise value through the application of the income approach and market approach. Likewise, if the in-spouse's compensation is above a reasonable level, this can lead to an understatement of the business enterprise value through the application of the income approach and market approach.

Does the company have to hire multiple employees as replacements?

The income approach and the market approach both typically rely on some indication of a company's earnings. In the income approach (capitalization of cash flow method), a normalized level of cash flow is capitalized into perpetuity. In the market approach, a market-based multiple is applied to normalized earnings indications. If shareholder/executive compensation has not been reported at a reasonable level, an adjustment will be required to estimate the subject company's true fair market value.

Table 1 and Table 2 present a simplified example of normalizing operating income to adjust for compensation above a reasonable level. The example assumes that the in-spouse is the controlling shareholder of a C corporation, and has received compensation at a level greater than the market indicates as reasonable. The example assumes that the analyst determined a reasonable level of compensation through analysis of the various applicable information sources presented at the end of this article. Further, the example assumes that the subject business operates in a volatile or cyclical industry, and that a five-year average is a reasonable indication of future earning capacity.

Any adjustment to compensation will have a multiplying effect on the enterprise value of a business when applying the capitalization of cash flow method. Table 2 illustrates this phenomenon, and relies on the compensation adjustments presented in Table 1.

Although the compensation adjustment impact on operating income is only $1 million, the impact on the business enterprise value in the example is

Table 1
Income Approach
Adjusting Reported Operating Income for Normalized Executive Compensation

	2011	2012	2013	2014	2015	5-yr. Average
Reported Operating Income	$ 2,150,000	$ 3,075,000	$ 2,500,000	$ 3,425,000	$ 2,850,000	$ 2,800,000
Plus: Reported Executive Compensation	$ 1,500,000	$ 1,600,000	$ 1,700,000	$ 1,800,000	$ 1,900,000	$ 1,700,000
Less: Normal Level of Executive Compensation	$ (650,000)	$ (675,000)	$ (700,000)	$ (725,000)	$ (750,000)	$ (700,000)
Equals: Normalized Operating Income	$ 3,000,000	$ 4,000,000	$ 3,500,000	$ 4,500,000	$ 4,000,000	$ 3,800,000

Table 2
Income Approach
Value Impact of Adjusting Executive Compensation

Selected Normal Operating Income without Compensation Adjustment	$ 2,800,000	Selected Normal Operating Income with Compensation Adjustment	$ 3,800,000
Selected Income tax Rate	35%	Selected Income tax Rate	35%
Unadjusted Debt-Free Net Income	$ 1,820,000	Adjusted Debt-Free Net Income	$ 2,470,000
Selected Capitalization Rate	15%	Selected Capitalization Rate	15%
Indicated Enterprise Value (rounded)	$ 12,100,000	Indicated Enterprise Value (rounded)	$ 16,500,000

$4,400,000. Due to this multiplying effect, it is clear that correctly identifying and addressing reasonable compensation issues is important in the valuation process.

In the income approach (discounted cash flow method), the value of a company is based on discounted future returns, often based on company management's projections. When applying this method, normalization of historical compensation is less important than in the capitalization of cash flow method. However, the valuation analyst must determine whether the projected level of shareholder/executive compensation is stated at a reasonable level. This may require interviews with the in-spouse, or other executive(s) who prepared the financial projections. The analyst must gain a clear understanding of the level of compensation and other benefits that are modeled into the projected results. The analyst should compare historical compensation to the projected level of compensation. However, even if historical compensation was not at a reasonable, market-based level, projected compensation may already be normalized in the projection process, and may not require adjustment by the valuation analyst.

In the market approach both the guideline publicly traded company method and the guideline merged and acquired company method often rely on some indication(s) of a company's earning capacity. This may be in the form of

(1) net income (an indication of earnings to equity owners),

(2) earnings before interest and taxes (EBIT) (an indication of earnings to all invested capital),

(3) earnings before interest, taxes, depreciation, and amortization (EBITDA) (an indication of cash flow to all invested capital), or

(4) other earnings metrics.

Market-based multiples are ultimately applied to relevant earnings metrics to estimate indications of value for the subject company. If the historical earnings of the subject company do not reflect a reasonable level of shareholder/executive compensation, the value indication resulting from the market approach may not reflect the company's true fair market value.

Table 3 presents a simplified example of adjusting EBIT to account for reported compensation that is below a reasonable level. The example assumes that the in-spouse is the controlling shareholder/executive of an S corporation, and takes a salary that is less than the market indicates as reasonable. The example assumes that the valuation analyst determined a reasonable level of compensation through analysis of the various applicable information sources presented at the end of this article. Further, the example assumes that the subject business operates in a stable industry, and that the latest 12 months (LTM) of operations represent a reasonable level of expected future earning capacity.

Compensation adjustment can have a multiplying effect on valuation.

Any adjustment to compensation will have a multiplying effect on the enterprise value of a business when applying the guideline publicly traded company method or guideline merged and acquired company method. Table 4 illustrates this phenomenon, and relies on the compensation adjustments presented in Table 3.

Although the compensation adjustment impact on EBIT is only $700,000, the impact on the business enterprise value in the example is $4,900,000. Once again, this illustrates the material impact of reasonable compensation adjustments, and the care that valuation analysts must take when determining such adjustments.

Table 3
Market Approach
Normalizing Executive Compensation

Subject Company Reported LTM EBIT	$ 3,000,000
Plus: Reported LTM Executive Compensation	$ 50,000
Less: Normal Level of LTM Executive Compensation	$ (750,000)
Equals: Adjusted LTM EBIT	$ 2,300,000

Table 4
Market Approach
Value Impact of Adjusting Executive Compensation

Subject Company Reported LTM EBIT	$ 3,000,000
Selected Guideline Company Based LTM EBIT Multiple	× 7.0
Indicated Enterprise Value (rounded)	$ 21,000,000
Subject Company LTM EBIT with Compensation Adjustment	$ 2,300,000
Selected Guideline Company Based LTM EBIT Multiple	× 7.0
Indicated Enterprise Value (rounded)	$ 16,100,000

SOURCES OF COMPENSATION DATA

There are many sources of compensation information available. The sources range in price from free to quite expensive. Some sources cover all industries. Some cover only one specific industry. Some include information on compensation for executive-level staff only. Some include information on all levels of staff. Some sources include salary only. Other sources include salary and benefits information. It is often beneficial to use more than one source, whenever possible.

The selection of which sources to use will depend on many factors. These factors include the following:

- *Industry*. There are industry-specific compensation reports available for some industries, particularly in the healthcare sector. There may not be an industry-specific compensation report available for other industries.
- *Position in the company*. There are more industry reports available for executive-level staff (*e.g.*, CEO or CFO) than there are for lower level staff members.
- *Budget*. Some executive compensation databases and industry-specific compensation surveys are very expensive.

General Compensation Databases (Fee-Based)

The following is a list of several fee-based, multi-industry compensation surveys. There are many others as well.

(1) **Economic Research Institute (ERI).** ERI offers salary and other data for more than 7,000 positions in more than 8,000 locations. One of the advantages of ERI data is the ability to search a particular city or state for compensation data. ERI delivers base salary, total compensation, and annual incentives for each position. Search parameters include position title, location, industry (SIC or NAICS codes), date (historical information

available), and company revenue. Results are broken into categories of 10th percentile, 25th percentile, median, 75th percentile, and 90th percentile. Detailed descriptions of each position are included. More information may be found at *www.erieri.com*.

(2) **Willis Towers Watson Data Services.** Willis Towers Watson, a compensation and benefits consulting company, publishes several different compensation surveys: *General Industry Compensation Policies and Practices Survey*, *General Industry Long-Term Incentives Policies and Practices Survey*, and *General Industry Board of Directors Compensation Policies and Practices Survey*. The *General Industry Compensation Policies and Practices Survey* is available on a global or regional basis, or one can purchase a report for a specific country. Information includes salaries, short-term incentives, sales incentives, overtime policies, deferred compensation for executives, and turnover rates. More information may be found at *www.twdataservices.com/twds/public/globalPpLanding.jsp*.

(3) **Compdata Surveys.** Compdata Surveys publishes several compensation surveys: *BenchmarkPro*, *Benefits USA*, and *Executive Compensation*. *BenchmarkPro* provides pay and benefits information for 500 positions. It includes salaries, pay practices, and benefits and is available for a region or for the United States. *Benefits USA* provides national and regional data on medical, dental, vision, and life insurance, as well as information on pension plans. Data are collected from approximately 4,500 companies and are broken down by industry and company size. The *Executive Compensation* survey provides data for 69 executive and senior management positions. Information includes total compensation, incentives, and perquisites. Data are gathered from more than 7,500 organizations. More information may be found at *www.compdatasurveys.com*.

(4) **Mercer.** Mercer publishes executive compensation surveys for the United States, Canada, and worldwide. The *US Executive Remuneration Suite* includes information from all their surveys. Users can also purchase the specific survey that fits their needs. Surveys are available for specific industries and sectors, including financial services (broken down into banking, insurance, and others), health care (broken down into healthcare management, operations, hospital executives, and other categories), retail, and others. Data provided include base salary, long-term incentives, short-term incentives, and total cash compensation, to name a few. More information may be found at *www.imercer.com/products/global-premium-executive.aspx*.

(5) **Culpepper.** Culpepper Compensation Surveys are available for the following sectors: technology, life sciences, and health care. They also publish a general industry compensation survey. The data provided include base salary, short-term incentives, total cash compensation, equity compensation, and long-term incentives, among others. They also publish a compensation survey for small companies and they publish several surveys by job function (including executive, sales, and operations). More information may be found at *www.culpepper.com*.

(6) **Aon Total Compensation Center.** Aon publishes compensation surveys for various specific industries, including energy, health care, and information technology. They also publish executive compensation surveys and various other benefit surveys. Their *Total Compensation Measurement Survey* is their most comprehensive product. It contains data from more than 4,700 companies. More information may be found at *www.totalcompensationcenter.com/TCC/home/home.jsp*.

Free Salary Surveys

There are many free online sources of salary information. Most of these sources only contain information on current salaries. They do not provide compensation information for prior time periods. There usually is also not a lot of detail provided. The following are descriptions of some of these free salary sources.

(1) **Bureau of Labor Statistics.** The Bureau of Labor Statistics (BLS), a division of the US Department of Labor, provides a great deal of information on pay and benefits. Salary

information is available by occupation, region, state, and metropolitan statistical area. The BLS also publishes reports on benefits and employer compensation costs. Some of the data on the BLS Web site are available historically as well. More information may be found at *www.bls.gov*.

(2) **CareerOneStop.** This Web site is managed by the US Department of Labor. The data on this site are obtained from the BLS. Information is available for more than 800 occupations. More information may be found at *www.careeronestop.org*.

(3) **Salary.com.** This Web site contains several databases that provide salary information regarding 4,200 jobs. The data have been gathered from surveys of human resources personnel. The information is updated monthly. Some of their databases are subscription based. One database is free but does not include much detail and is only available on a current basis. More information may be found at *www.salary.com*.

Industry-Specific Sources

There is a great deal of information publicly available for some industries (for example, health care). For other industries, little or no information is available. Many compensation sources are available for the healthcare industry. Several of these sources, along with other industry-specific sources, follow.

(1) **Medical Group Management Association (MGMA).** MGMA publishes several healthcare-related compensation surveys each year, in addition to other benchmarking reports. Surveys include *Provider Compensation and Production Report*, *Management Compensation Report*, *Physician Placement Starting Salary Report*, *Academic Practice Compensation and Production Report*, and *Medical Directorship and On-Call Compensation Report*. More information may be found at *www.mgma.com*.

(2) **American Medical Group Association (AMGA).** AMGA publishes the annual *Medical Group Compensation and Productivity Survey*. The data are available by specialty and information regarding benefits is included. The AMGA also publishes an annual *Medical Group Executive and Leadership Compensation Survey*. More information may be found at *www.amga.org*.

(3) **Hospital & Healthcare Compensation Service.** This organization publishes numerous healthcare-related compensation surveys. The surveys include an annual *Physician Salary & Benefits Report* (broken into specialties), *Corporate Compensation Salary & Benefits Report* (for healthcare executives), *Hospital Salary & Benefits Report* (which covers most hospital jobs such as radiology, nursing, nutrition, and others), and *Nursing Home Salary & Benefits Report*, to name a few. Information regarding benefits is included. More information may be found at *www.hhcsinc.com*.

(4) **Institute of Management Accountants (IMA).** The IMA publishes an annual *Global Salary Survey*. The data are broken down into various groupings by type of degree, location, size of firm, job title, years in service, and others. This publication is available free of charge at *www.imanet.org*.

(5) **Robert Half.** Robert Half publishes an annual *Salary Guide for Accounting and Finance*. Information is provided for various accounting and finance positions and is broken down by company revenue. There is also a section that provides variances for different locations. Robert Half also publishes an annual *Salary Guide for the Legal Field*, which contains data similar to the information presented in the accounting survey. These publications are available free of charge at *www.roberthalf.com*.

(6) **ALM Legal Intelligence.** ALM publishes several surveys related to legal compensation. These surveys include *American Lawyer Compensation Ratios*, *Law Department Compensation Benchmarking Survey* (which includes information on salaries, bonuses, and incentive compensation), and the *Survey of Law Firm Economics*. The *Survey of Law Firm Economics* is a comprehensive benchmarking report that includes a section on compensation. Cash compensation and total compensation are provided for lawyers based on position, region, size of firm, and other

criteria. More information may be found at *www.almlegalintel.com*.

(7) **Zweig White.** This company publishes many benchmarking reports for the engineering and architecture industry. Their annual *Salary Surveys of Architecture, Interior Design & Landscape Architecture Firms* and their *Salary Surveys on Engineering Firms* are available for three regions of the United States: Northeast & South Atlantic, Central, and Mountain & Pacific. These surveys provide compensation information by position and by size of firm as well as by state. Zweig White also publishes an annual *Management Compensation Survey*. More information may be found at *www.zweiggroup.com*.

(8) **D. Dietrich Associates.** This company publishes various industry-specific surveys. Industries covered include architecture, construction, engineering, and science/laboratory. More information may be found at *www.dietrichsurveys.com*.

A list of various industry-specific compensation surveys (and other compensation surveys) may be found at HR-Guide, LLC, *www.hr-guide.com/Compensation/Salary_Surveys.htm*. A list of trade association compensation surveys was published recently in *Business Valuation Update*.[5]

CONCLUSION

In marital dissolutions including a closely held business as a major component of the community property, it is important to scrutinize the compensation of the in-spouse. This is especially true when the in-spouse is a controlling shareholder of the subject company. A lack of oversight, combined with tax-motivated strategies, may cause a controlling shareholder/executive to take compensation at a level significantly below or above a reasonable, market-based level.

Valuation analysts and other experts should scrutinize both (1) whether compensation is reasonable or requires adjustment, and (2) what a reasonable, market-based level of compensation is. Determining whether shareholder/executive compensation is reasonable requires an understanding of both the (1) specifics of the position in question, and (2) factors affecting the shareholder/executive's compensation motivations. Guidance from the Tax Court is helpful in family law matters when determining whether executive compensation is reasonable.

Experts must understand the relationship between compensation normalization adjustments in the business valuation process and spousal support payment calculations. This relationship may be relevant, or not relevant, depending on the specifics of the case.

Once an expert has determined that shareholder/executive compensation is not reasonable, there are many data sources available that the expert can use to determine a reasonable, market-based level of compensation. A number of those sources are identified in this article. It is important that the valuation analyst understands both the subject shareholder/executive position and the foundation for the data presented in the market-based information sources. A lack of understanding on the part of the expert can lead to an inaccurate estimate of reasonable compensation, resulting in an unreliable or unconvincing opinion of value.

NOTES

1. 731 N.E.2d 142, 94 N.Y.2d 696 (N.Y. 2000).

2. 183 N.J. 290, 873 A.2d 501 (N.J. 2005).

3. No FM-16-1403-11, N.J. Sup. Ct. App. Div., 2015 WL 2456690 (May 26, 2015).

4. No. 1 CA-CV 12-0747, Ariz. Ct. App., 2014 WL 2462812 (May 29, 2014).

5. "Trade Associations Can Be Excellent Sources of Compensation Data," *Business Valuation Update* (December 14)