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Special points of interest:

- Our email addresses have changed! Please note our new email addresses: Shelley A. Drury—sd@litvalexperts.com and W. Cary Deaton—wcd@litvalexperts.com.
- Cary Deaton returned from his three month sabbatical in January 2008. He is currently accepting new clients and is available Tuesdays through Fridays.

Expert's Valuation Report Ruled Inadmissible

Written By: W. Cary Deaton, CPA, ABV, CVA

A recent Federal Bankruptcy case highlights the importance of a testifying expert maintaining objectivity in fact and in appearance.

In *Med Diversified v. Addus Healthcare* (2006 Bankr. Lexis 1677), the presiding Judge granted the defendant's motion to deny admission of the plaintiff's expert's report because of "**pervasive bias**".

Under Federal Rule 702, testimony is reliable if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

In this case, the Court did not take issue with the sufficiency of the data or with the principles or methods employed. It was the application of these methods to the facts of the case that resulted in the objection. The court concluded that the expert, "deliberately drove his adjustments... toward the lowest order of value, in order to accomplish his client's implicit bidding".

The moral of this story? It is not enough for the testifying expert to have reviewed sufficient data and applied proven methodologies. The expert must be objective in fact and in appearance. If bias is detected by the trier of fact, the work product may be without value and inadmissible.

Allow your expert to be an advocate for his/her opinion, rather than an advocate for your client.

New AICPA Business Valuation Standards

Written By: Shelley A. Drury, CPA, ABV, CVA



After nearly four years of exposure drafts and deliberations, the American Institute of Certified Public Accountants

(AICPA) issued a new professional standard on valuation services: *Statement on Standards for Valuation Services No. 1 "Valuation of a Business, Business Ownership Interest, Security, or Intangible Asset"*. Effective January 1, 2008, the standard provides guidelines to CPAs for developing estimates of

value and reporting on the results. It applies to any AICPA member, or non-member CPAs who perform valuation engagements that estimate the value of a business, business interest, security or intangible asset.

As CPAs, members of the AICPA, and holders of the AICPA's ABV credential, Cary and I have implemented these standards at Dock Street Litigation & Valuation, as well as the standards set forth by the National Association of Valuation Analysts (NACVA), of which we are also members.

While you will probably see little difference in our work as a result of this new standard, it will help promote

consistent practice among the more than 25,000 CPAs currently providing Business Valuation and Forensic & Litigation Services.

Our Services Include:

Assistance in Marital Dissolution, Including Collaborative Divorce

Personal Economic Loss Calculations

Business Loss Calculations

Fraud Investigation & Forensic Accounting



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Providing comprehensive litigation & valuation services to the legal community throughout Western Washington.

Divorce Valuations—Recent Cases

James H. Stewart v. Sarah P. Stewart, 2007 ID 8 (1/26/07)

The Idaho Supreme Court determined that personal and enterprise goodwill should not be segregated in the valuation of a personal services business in divorce because it found no difference between a professional service business and any other type of business.

Judith Bernier v. Stephen A. Bernier, No SJC 09836 (Mass. 9/14/07)

The Massachusetts Supreme Court determined that discounts for key man and marketability were not applicable because the husband intended to retain the business following the divorce.

Annette J. Gruetter Bunkers v. Jeffrey A. Bunkers, 2007-Ohio-561 (2/9/2007)

The Ohio Court of Appeals, Sixth District, determined that a trial court appropriately considered a solo practitioner’s professional goodwill, inclusive of personal goodwill, in determining the fair market value of the practitioner’s professional practice. The Court rejected the argument that personal goodwill could be taken into account in the discount for lack of marketability.

Excerpts from “Stockdale’s Court Corner”, John Stockdale, Jr., Business Valuation Resources, LLC, *The Value Examiner*.

Julie Ann Gaskill v. Jon Kevin Robbins, No. 2005-CA-002088-MR (Ky. App. 12/8/06)

The Kentucky Court of Appeals determined that a trial court must consider the goodwill in a professional practice when making its valuation in a divorce situation, but need not assign a value to that goodwill. The Court rejected the position that goodwill should be differentiated between professional and enterprise goodwill. Rather, it adhered to its long-standing precedent that all goodwill is divisible marital property.

We’re on the Web!
www.litvalexperts.com

Continuing Legal Education

Special thanks to those of you that participated in our December 4th CLE event, “Divorce: Making Sense of the Dollars & Cents”! This year’s event, held at the Sheraton Hotel in Tacoma, was attended by over fifty area attorneys and included the following topics:

- “Divorce, Taxes & Post-Dissolution Financial Planning”
- “Collaborative Law: A Panel Discussion”
- “Analyzing Financial Statements & Business Valuations”
- “Social Security, Pension & Stock Option Valuations”

In addition to our annual CLE seminars, we are available throughout the year to present at your firm or association meetings.

If you are interested in hosting a seminar or would like additional information about our annual events, please contact Tina Mungaray, Office Manager, at (253) 573-9500 or tina@litvalexperts.com.

