



2015

BVR Legal & Court Case
YEARBOOK

In-depth analysis for business
valuation case law.

BVR
What It's Worth

BVR Legal & Court Case Yearbook 2015



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What It's Worth

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Introduction

Dear Reader,

As this compendium shows, 2014 gifted business valuers with a host of interesting and educational cases in many areas of law. Although appraisers hear a lot about picking a niche and becoming an expert in it, there are great benefits to reviewing cases from areas other than one's own to see how different courts handle a particular topic. This yearbook allows you to do just that.

A perfect illustration of this point is personal goodwill, a perennial topic of discussion among appraisers. This year, personal goodwill took the spotlight in several noteworthy cases, including the Tax Court's much-discussed *Estate of Adell* decision. In a dispute over the value of the decedent's 100% interest in a C corporation, the court, while chastening the estate for its "conflicting expert reports," adopted the estate expert's valuation, calling his treatment of personal goodwill more credible than that of the IRS's expert. Earlier in the year, Judge Paris, the author of the *Adell* decision, ruled on another tax dispute, *Bross Trucking*, which hinged on the same issue. Both opinions appear in this book, and, when read together, provide valuable insight into this particular judge's thinking on goodwill.

The topic was also at the center of a fascinating dissenting shareholder suit, *Potok v. Rebh*, in which a state court drilled down on the economic and legal theories underpinning personal goodwill when it reviewed a buyout in which the CEO of the acquired company had designated over \$10 million as personal goodwill for himself and three other officers. The question was whether the personal goodwill allocation was justifiable or self-dealing by the defendants, as the plaintiff claimed. In a divorce case, *Brave v. Brave*, featuring spouses who co-owned a very successful restaurant, the issue took another turn. Two different appellate courts disagreed on the characterization of the goodwill present and on the larger question of whether to extend the scope of personal goodwill to businesses other than professional partnerships. Valuers working in the marital dissolution arena have noticed an effort by litigators to move courts to apply the concept of nontransferable personal goodwill to professions such as "chef." It will be interesting to see how receptive the courts are.

Valuation methodology is almost always a flashpoint in litigation. This year, courts in very different jurisdictions reminded appraisers of the limitations of the discounted cash flow (DCF) method. In this regard, perhaps the most attention-catching case was *Laidler v. Hesco*, a statutory appraisal action in which the Delaware Court of Chancery (J. Glasscock) found the DCF inappropriate because of the unique nature of the subject company's business and adopted the direct capitalization of cash flow (DCCF) analysis the parties' experts advocated.

Similarly, the Bankruptcy Court, in *Adelphia Recovery Trust v. FPL Group*, rejected the recovery trust's fraudulent transfer claim, finding the trust's expert was mistaken to base his valuation solely on the DCF analysis. "The DCF works best (and, arguably, only) when a company has accurate projections of future cash flows; when projections are not tainted by fraud; and when at least some of the cash flows are positive." This case was deficient in all regards, the court said. In a different bankruptcy case, *In re Genco Shipping & Trading Ltd.*, another expert advocating for the use of the DCF also fared poorly. This time, the Bankruptcy Court found that the nature of the industry precluded the possibility of achieving a reliable valuation by way of the DCF. Of course, as the reader of this book discovers, there were many more cases in which courts looked to the DCF method to produce a sound valuation.

As in the past, another issue that sparked discussion and litigation throughout the year was discounts—whether to apply them and what rate to use. Late in the year, two New York State courts presiding over fair value proceedings offered particularly rich decisions that centered on the discount for marketability, and also discussed other important valuation issues, that no expert worth his or her money will want to ignore. The cases are *Ferolito v. AriZona Beverages* and *Zelouf International Corp. v. Zelouf*.

There also was no shortage of *Daubert* cases, and we reported on those that added to the discussion of what admissible expert testimony looks like. This introduction only provides a sneak preview of the valuation cases and issues that have shaped the past year. Financial experts looking for a fuller picture of the litigation landscape will do well to dig into the *BVR Legal and Court Case Yearbook 2015*.

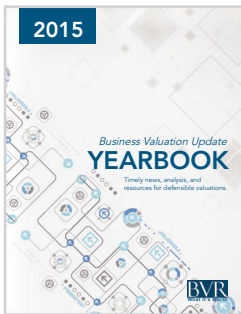
Sincerely,



Sylvia Golden, Esq.
Executive Legal Editor

YEARBOOKS

All of the year's most important developments are reflected in two new resources.



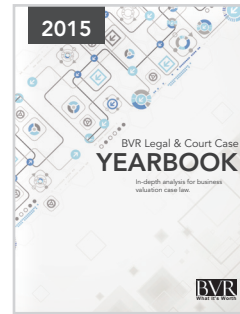
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\$210 Print / \$310 Print & PDF

Stay current with the most innovative approaches and techniques, leading conferences, new court decisions, and changes in regulations and

standards in the profession with on-the-ground reporting from valuation experts, thought-leaders and the BVR editorial team. The *Business Valuation Update Yearbook 2015* contains all the must-have articles of the past year and is divided into seven categories for easy use:

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- Section II: Discounts for Lack of Marketability and Lack of Control
- Section III: Industry-Specific Valuation
- Section IV: From and In the Courtroom
- Section V: BV Profession and Practice Management
- Section VI: Reviews of Data Sources and New Books
- Section VII: Data



BVR Legal & Court Case Yearbook, 2015

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The *BVR Legal and Court Case Yearbook 2015* is essential for business valuation professionals and attorneys to stay current on the most important

legal issues confronting the profession.

The Yearbook digests the most critical business valuation-related court decisions and offers in-depth analysis of the approaches the parties and the courts took to arrive at the decisions. Over 75 articles take readers through some of the best (and worst) practices that attorneys and experts used in making their case in courts throughout the country.

In addition to the digests, the Yearbook contains a case summary table, as well as a listing by state/jurisdiction, court, and case name, followed by a short description of the key valuation issue of each case. Get a comprehensive picture of recent developments in business valuation law with this must-have resource.

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