



2018

Excerpt from:

Business Valuation Case Law  
**YEARBOOK**

In-depth analysis for business valuation case law.



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# Business Valuation Case Law Yearbook 2018 Edition

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**What It's Worth**

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## **What It's Worth**

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## Introduction

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Dear Reader,

Valuation and damages issues are an integral part of civil suits, and attorneys and judges look to experts to achieve a proper financial outcome. Therefore, it is critical that financial advisors know not only their craft but also the legal landscape in which they perform.

This compendium<sup>1</sup> of case law represents *BVLaw's* analysis of the most noteworthy court decisions of 2017 in the areas of shareholder, bankruptcy, contract, intellectual property, ESOP, federal tax, or marital litigation. The collection is a deep source of teachable moments—about legal principles, valuation methodology, and the act (art) of presenting expert opinions—that benefits the generalist as well as the specialist.

Highlights include analysis of a series of statutory appraisal rulings by the Delaware Court of Chancery. The first question valuers ask whenever the Chancery issues a fair value ruling is one of methodology: discounted cash flow (DCF) analysis or deal price? For a long time, the Chancery seemed to favor the DCF, but, in recent years, the court increasingly has deferred to the market price. This year's decisions—*In re PetSmart, Inc.*, *In re SWS*, and *ACP Master v. Sprint*—show a court vacillating between the two approaches depending on the integrity of the sales process and the reliability of the projections undergirding the post-transaction DCF. On the methodology question, readers will want to pay attention to *DFC Global*, a Delaware Supreme Court decision in which the chief justice expressly questioned the integrity of the Chancery's DCF analysis and remanded for a recalculation of fair value. In a lengthy opinion, the chief justice made his preference for the market price clear. The DCF model is most valuable when there is no observable market price, which was not true in the instant case, the Supreme Court noted.

At least two other courts issued important fair value decisions. In *Lutz v. Lutz*, a Minnesota district court ordered a minority shareholder buyout in a long-lasting dispute between siblings who inherited interests in a well-known local supermarket business. Prominent valuation experts squared off, but the court performed its own DCF analysis. In adjudicating the matter, the court included copious references to Delaware Court of Chancery case law. Similarly, in *Kottayil v. Insys*, an appeals court decision that upheld the trial court's use of an IPO valuation, the Arizona Court of Appeals

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<sup>1</sup> The yearbook features an analysis of all the court cases that were added to the *BVLaw* database in 2017. *BVLaw*, published by Business Valuation Resources, is an exclusive collection of 3,700+ court cases and accompanying analysis with a focus on business valuation and damages issues as they appear in fair value disputes, economic damages (including lost profits) suits, federal tax litigation, marital dissolution proceedings, and other court proceedings. *BVLaw's* legal experts continuously track state and federal court decisions to ensure our readers stay on top of the latest valuation and damages-related controversies.

specifically referenced Delaware decisions. These cases illustrate how far-reaching the authority of Chancery case law is and how important it is for financial experts to keep up with it, regardless of the jurisdiction in which a financial expert practices. The *BVLaw* compendium helps the reader do so.

The ESOP area provided its own drama. In spring 2017, two federal trial courts issued almost identical rulings against the trustees of two employee stock ownership plans. In *Brundle v. Wilmington Trust* and *Perez v. First Bankers Trust Services (FBTS)*, the courts found the trustees had failed to vet the pretransaction valuations independent financial advisors had performed. Therefore, the trustees had caused the respective ESOPs to overpay. The trustee in *Brundle* immediately challenged the decision in a post-trial motion, but the court let stand its earlier ruling. *BVLaw* expects to report on the appeal in the future. Recent reports suggest *FBTS* and the Department of Labor have resolved the dispute; the trustee will pay a substantial sum. Anyone practicing in this area will want to be familiar with both cases.

There also has been no shortage of economic damages cases raising questions as to the proper measure of damages. Different courts have addressed the matter differently. For example, in *West Plains v. Retzlaff*, the 8th Circuit Court of Appeals upheld a sizable jury award in a business tort case that was adjudicated under Nebraska state law. What stands out is that the seller of a company and former employees were found liable for interfering with the plaintiff's business relations even though none of the defendants was bound by a noncompete or employment agreement. Further, although the plaintiff did not immediately collapse, the plaintiff's damages expert was able to show that the defendant's wrongful conduct caused a total loss to the plaintiff.

In contrast, in *Mifflinburg Telegraph v. Criswell*, a case that had similar facts, a different court said it could not "in good conscience" award the economically hurt plaintiff total loss damages because the plaintiff still had some assets and accounts receivable. The proper measure of damages was lost profits, the court found.

In the divorce area, the New Jersey *Slutsky v. Slutsky* case merits attention for its discussion of a complex goodwill-related matter. The husband was an equity partner in a law firm and the wife claimed she was entitled not only to a portion of the husband's partnership interest, but also to a portion of the goodwill value attributable to the firm, which she argued existed. The trial court sided with the wife, but its conclusory valuation and equitable distribution findings piqued the appellate panel, which remanded for review by a different trial court judge. A "nuanced methodology is required," the appellate panel cautioned the trial court (and appraisers).

Readers of the compendium will find many more compelling cases, all of which will assist financial experts to develop a deeper understanding of the current litigation landscape.

Sincerely,



Sylvia Golden, Esq.  
Executive Legal Editor



## Court Case Summary Table

Presented in order of case type, then by jurisdiction.

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