

BUSINESS VALUATION UPDATE

TIMELY NEWS, ANALYSIS, AND RESOURCES FOR DEFENSIBLE VALUATIONS

***BVLaw*: A Look Behind the Curtain**

By R James "Jim" Alerding, CPA/ABV,
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Case law is the backbone of most business valuations. That is why Business Valuation Resources (BVR) originally created *BVLaw*, now the largest and most comprehensive source for business valuation-related case law. BV practitioners and attorneys alike have come to rely on *BVLaw* for its accuracy and currency—not to mention the hours of saved research time.

You may not know about *BVLaw*, or you might not know how it works and what it's all about. After editor Sylvia Golden's untimely death in August 2021, Jim Alerding was recruited to lead BVR Legal. BVR colleagues consider Sylvia, an attorney, one of the most dedicated and erudite professionals with whom we have ever had the honor and pleasure of working. The authors here are indebted to Sylvia for the indelible influence she had on the vision for and growth behind BVR Legal.

Our goal for this article is to further educate and inform readers on the breadth of coverage and depth of unique expertise available in *BVLaw*.

BVR Legal mission and purpose. The BVR Legal team curates U.S. law cases¹ that center on valuation and litigation matters and are pertinent to BV and forensic professionals, regardless of whether they are testifying experts or not. Currently, *BVLaw* covers approximately 4,300 cases, and we add approximately 70 cases annually.

BVLaw is also a state-of-the-art search engine so not only will users stay current on what is happening in business valuation and financial forensic law, but they can also search for case law relevant to specific parameters, such as keyword, jurisdiction, decision date, judge, or expert name.

History. Shannon Pratt—the original founder of Business Valuation Resources—launched *BVLaw* in 1999. It started off as Judges & Lawyers Business Valuation Online and was renamed *BVLaw* in 2003. Shannon was always ahead of his time in business valuation. He recognized early on that a database of law cases would be of great benefit to BV professionals.

Since the acquisition of BVR by the current owners, *BVLaw* has been enhanced and expanded to where it is today.

How is *BVLaw* constructed? *BVLaw* consists of a digital body of cases from various courts around the United States including both federal and state courts. The type of court nor the type of case does not play into how cases are selected, but rather the nature of the case content is what is important for it to be included in *BVLaw*. As mentioned, the primary criterion is that the case should deal with either a business valuation issue and/or issues dealing with economic damages, intellectual property issues, or issues dealing with expert testimony. Each month, we select approximately six cases to add to *BVLaw*.

¹ There are currently about 133 Canadian Cases but at this time we are not adding any Canadian cases.

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How are the cases selected? The first thing to note here is that *BVLaw* is not intended to include every case that deals with the topics noted above. We select cases that either have new concepts, provide new takes or decisions on existing concepts, or are of continuing interest to the professionals who use *BVLaw*. For example, tax affecting of pass-through entities (PTE) is an important and popular topic for BV professionals, so cases (especially tax cases) on that subject are almost always selected as a case to be digested and published in *BVLaw*.

We also like to listen to our clients and get a feel for what cases they would like to see more of at any given time. For example, during the pandemic, we added a decent number of cases dealing with whether or not liability and lost profits insurance covered COVID-19 damages. (Hint: Mostly, they were not covered.)

Each month, an experienced attorney works with us to provide the first cut of cases to consider for digesting and inserting into *BVLaw*. She uses a set of about 25 “categories”² as the starting point for a keyword search of the LexisNexis³ court case database. The search focuses on new cases so that our additions each month are always fresh and new. This initial research usually returns around 50 to 80 cases from those categories each month. They are provided to Alerding in two batches provided bimonthly. In addition, we often have cases supplied to us voluntarily from attorneys or BV professionals. These are cases that the submitter believes might be important and of interest to our *BVLaw* users. For example, we have several ESOP valuation experts who alert us to important new ESOP valuation cases whenever the opinions are issued. This has been valuable input for us in keeping *BVLaw* up to date on this important issue.

- 2 See sidebar for a list of categories.
- 3 LexisNexis content includes more than 293 million court dockets and documents, over 159 million patent documents, 4.25 million state trial orders, and 1.45 million jury verdict and settlement documents, per their website.

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Once we have the selected cases for the month, plus any others our clients and readers provide, Alerding reviews each case and selects the top six cases that are most relevant to our users to be included for that month's input. If more than six are "musts" for that month, then they will be added to the mix.

What happens to the selected cases? Once a case has been selected, Alerding outlines the metadata information first, which includes the following information:

- Case name;
- Case citation;
- Title (a short description of the case content);
- Teaser (a brief description of the key elements of the case, i.e., what happened and what was decided);
- Key words (from the opinion);
- Experts (if named in the opinion);
- Judge(s);
- Whether the case is in federal or state court;
- The jurisdiction of the court;
- The full name of the court (e.g., United States District Court); and
- NAICS and SIC codes to identify the primary business industry, as related to the particular case.

This information will be used for the summary of cases that is published each month in *Business Valuation Update*.

And now for the digest! Once the metadata information is prepared, Alerding digests the case. The case digest is what makes *BVLaw* unique. It is not just a recitation of some summary from the case itself or from another case database

List of Categories in *BVLaw*

- Antitrust;
- Bankruptcy;
- Breach of fiduciary duty;
- Buy-sell agreement;
- Condemnation;
- Contract;
- Economic damages and lost profits;
- Shareholder dissent/oppression;
- ERISA;
- ESOP valuations;
- Estate and gift taxation;
- Evidence;
- Expert testimony;
- Federal taxation;
- Fraud;
- Intellectual property;
- Judicial dissolution;
- Malpractice (appraisal);
- Malpractice (legal);
- Marital dissolution/divorce;
- Personal injury;
- Securities litigation;
- State taxation (including ad valorem);
- Tort; and
- Winstar.

but a unique digest intended to make *BVLaw* more useful. Instead of having to read through an entire opinion (and some of them can be very long), the user can read the digest and get the information needed to understand the decision and its relevance to the BV and forensic professional. And, if the user wants more specifics on the case, the digest provides a link to the original court opinion, which is also made available through *BVLaw* as a courtesy to the user.

As we digest these cases, we keep the following guidelines front and center:

1. The very definition of "digest": "1: a summation or condensation of a body of information: such as: a systematic compilation of legal rules, statutes, or decisions b: a periodical voted to condensed versions of previously published articles" (Merriam-Webster Dictionary).
2. Our objective for the digest is to provide a detailed analysis of the case opinion so users of *BVLaw* obtain a knowledge of the main case issues without having to read the lengthy opinion in its entirety.

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3. The key issues in the opinion covered in the digest are those that, in the opinion of the digester, are of central importance to the users of *BVLaw*. This means that some decision factors from the case will not be covered but often will be referred to in general and noted.
4. The digests do not include exhaustive citations within the opinion, but users of *BVLaw* can link directly to the case opinion and easily access all citations.
5. As a general rule, the digests present “just the facts” and avoid editorial opinion, except where appropriate. For example, the digest could say the ruling is “important” or a “landmark decision.”
6. We include analysis as appropriate. For example, “this is the first case we know of that has addressed this matter” or “this appellate ruling goes against every other circuit that has ruled on it.” This is factual insight versus editorial opinion and is important to include wherever possible.
7. When we dive into complex rulings, we use the “just tell me a story” strategy to summarize as simply and concisely as possible. We will avoid minutiae if it is not helpful to the narrative.

We have heard from users that the digest is the most important part of *BVLaw*. It provides an

efficient and effective way for the BV professional to utilize *BVLaw* and to get the best information from it in a timely manner. Trying to wade through an entire opinion can be time-consuming and can result in extra time without an efficient result.

Conclusion. We hope that this tour through *BVLaw* has been helpful. If you are not already a subscriber, we would hope you will think about becoming one.⁴ It can provide a new research tool for you. Keep in mind that *BVLaw* is intended to provide the best BV and forensic cases. We believe this laser-like focus on the most important issues provides the best result for you the user. ♦

R. James Alerding, CPA/ABV (*Alerding Consulting LLC*), is the editor of *BVLaw* and has more than 45 years of experience working with businesses in various consulting matters and over 30 years of experience with complex valuation and litigation support matters. He lectures frequently on business valuation and forensic services and has testified on valuation and economic damages in a variety of federal and state courts.

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⁴ Subscribe at www.bvresources.com/products/BVLaw (Note: You already have access to *BVLaw* if you are a subscriber to *BVResearch Pro*.)