The Franchise Valuations Reporter

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Our Expertise

Within the franchise, distribution and dealership context, we are experts in:

- Valuations
- Damages
- Expert Testimony
- Finance, Accounting & Tax

Have a Question About Succession Planning for Franchise Owners?

Call us for a free, confidential consultation. And we're always interested in your comments about the newsletter.

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We Write the Book

Franchise Regulation and Damages, the only treatise that covers valuations and damages in franchise disputes, is updated 3 times a year.

For more details, to see a Table of Contents or to place an order, go to the Wolters Kluwer Law & Business web page here.

Valuations

Fair Value, in Oppressed Shareholder Suit, Affected by Tax Law Change

In *In re Appraisal of Regal Entertainment Group.*,[1] a "fair value" statutory appraisal action, Delaware's Court of Chancery adopted the deal price minus an adjustment for synergies as fair value. But of broader application the court found a more significant adjustment: Regal's board approved the merger agreement in early December 2017 followed quickly by then-President Trump signing the Tax Act into law which effected changes (in substantially lowering the tax rate) taking effect starting Jan. 1, 2018 while the merger closed in February 2018.The result of the lower tax rate was a higher value for the enterprise, with the Court finding fair value higher than the merger consideration.

Healthcare Valuation 2021 Update

As reported by Business Valuation Resources, a presentation by Don Barbo and Brad Parker, discussed the COVID-19 pandemic and two very significant laws in healthcare transactions and valuations. The Stark Law and the Anti-Kickback Statute (AKS), along with the 2021 final rules, will affect healthcare valuations and what facts analysts will need to consider. In this healthcare valuation update, Barbo and Parker's topics were:

- COVID-19 Healthcare Impact
- Testing and Hospital Admissions: March to May 2021
- COVID-19 Impact on Healthcare Services Public Markets and M&A
- Balance Sheet Impacts
- Profit and Loss (P&L) Impact
- Stark Law and Anti-Kickback Statute (AKS)

Impact of COVID-19 On Global Business Valuation and Appraisal

On April 8, 2020, a global coalition of leading valuation experts representing the American Society of Appraisers (ASA), Chartered Business Valuators Institute (CBV Institute), Global Association of Certified Valuators and Analysts (GACVA), National Association of Certified Valuators and Analysts (NACVA), and the Royal Institution of Chartered Surveyors (RICS), came together to discuss the "Impact of COVID-19 to Global Business Valuation and Appraisal." The key takeaways were:

· ***Disclosure of Subsequent Events*** - While a subsequent event does not necessarily change the value as of a valuation date, it may infer that the value as of a later valuation date may also be relevant in some cases or situations.

· ***Known and Knowable vs. Relevant*** - The date at which something is or was known or knowable is often different for different people. Moreover, cases before a tax court have noted subsequent events that occur within a reasonable time after the valuation date may be appropriate to consider.

· ***Market Data vs. Fair Market Value*** - Regardless of the approach(s) or method(s) used to value a business post COVID-19, it is important, to consider and apply multiple methods, approaches, and forecasted cash flows in order to make appropriate decisions.

Age and Gender-Specific Risk – Effect on Business Value

Is there an impact on value tied to management's age and gender? A new paper, "Age, Gender, and Risk-Taking: Evidence From the S&P 1,500 Executives and Market-Based Measures of Firm Risk," which appears in the new issue of the Journal of Business Finance and Accounting, explores (in great depth) the question of whether firms with older and female executives are less risky. Using data from the S&P 1,500 firms, the authors find that "firms led by older CEOs and CFOs have less volatile stock returns and lower idiosyncratic risk." As for gender, their conclusions are "more equivocal," finding that female-led firms may reduce firm-specific risk tendencies … a little.

In Jackson case, Tax Court Dismisses IRS Expert's Revenue Projections As 'Simply Not Reasonable'

As we discussed in our last issue, Michael Jackson died in 2009. Litigation ensued in the U.S. Tax Court over the fair market value of Jackson's name and likeness. The estate's image-and-likeness experts found this asset was worth about $3 million. In contrast, the IRS' expert (with both using a discounted cash flow analysis), valued this asset at over $161 million. At trial, the estate established that, although Jackson was once an admired musician and superstar, at the time of death, his reputation was compromised in the wake of allegations of child sexual abuse and a criminal trial of which he was acquitted. He accumulated serious debt and was at risk of bankruptcy.

In reviewing the claimed “foreseeable opportunities,” relied on by the IRS’ expert, the court found four of the five revenue streams included were unforeseeable at the time of death. The court said the same problem “lurk[ed] everywhere in our analysis of the value of Jackson’s image and likeness—his poor reputation other than as an entertainer.” In the last 10 years of his life, Jackson received almost no revenue from his image and likeness “despite being one of the most well-known persons on Earth.” According to the court: “Any projection that finds a torrent of revenue, and not just a trickle, from such a man’s image and likeness—especially one who in the last two years of his life was so unpopular he did not even have a Q score—is simply not reasonable.” The court assigned a value of approximately $4 million to this asset.

IRS Is Hiring Business Valuation Experts

There is a shortage: the IRS is looking to hire experienced business appraisers for six open positions in various locations across the U.S. According to the job posting, the salary ranges from $92,143 to $146,120 per year, and the positions have the title of financial analyst. Duties include preparing and reviewing appraisals of businesses and business interests, serving as an expert witness in court, meeting with taxpayers, and more.

Royalty Research

Practitioners should be aware that the ktMINE royalty rate database is an organized, and interactive resource that provides direct access to 70,000+ royalty rates and 20,000+ licensing agreements. Both subscribers and day-pass users can conduct unlimited searches and view unlimited license agreement summaries with royalty rates. Also, there is unlimited use of the online Analysis Center which provides summary information and analysis of selected license agreements.

Discount Rate – Current Research on Market Risk Premium and Risk-Free Rates Used Globally

The average required return on equity used for the U.S. is 7.3%, according to “Market Risk Premium and Risk-Free Rate Used for 88 Countries in 2021,” the latest research from Pablo Fernandez, Sofia Bañuls, and Pablo Fernandez Acin. The paper contains the statistics of a May

2021 survey about the risk-free rate (RF) and the market risk premium (MRP). By June 3, 2021, 1,624 email responses were received (from more than 15,000 sent).

Pre-IPO Studies Are Not a Valid Basis for Calculating DLOMs

According to a recent study, one of the two most widely-used approaches used by valuators to determine a discount for lack of marketability (DLOM) is simply unreliable. The restricted stock studies compare transaction price. Historically the two methods for analyzing the appropriate DLOM with respect to restricted shares with contemporaneous trading prices were restricted stock studies and IPO studies. But a new research paper shows that pre-IPO studies lead to conclusions that are unsound in theory and in practice. The paper discusses six major flaws in the data that, in the author's opinion, make the pre-IPO studies' conclusions totally unreliable for determining DLOMs.

[1] 2021 Del. Cha. LEXIS 93; 2021 WL 1916364 (May 13, 2021)

Tortious Interference

Claim Proceeds That Planet Fitness Interfered With Franchisee's Business Relationships

According to CCH, a fitness center franchisor's status did not shield it from claims that it tortiously interfered with its franchisee's business relationships. So held a federal district court in New Hampshire.[1] The alleged interference was with the franchisee's landlord, a potential partner, and a competing franchise. The franchisor's relationship with the franchisee did not make it a party to those contracts, agreements, and negotiations between the franchisee and third parties. Although the franchisor would be a party to any future franchise agreements between itself and the franchisee that resulted from these contractual relationships, it was not a party to franchisee's attempts to develop these three business opportunities. In addition, the franchisee was not required to allege actual malice, only that the interference was intentional and improper. The franchisee's claim for tortious interference with prospective business contracts went forward.

[1]*Planet Fitness International Franchise v. JEG-United, LLC*, May 14, 2021, McCafferty, L.

War Cries

Hoka Hey – Today is as good a day as any to die – Crazy Horse to his Lakota warriors before the Battle of the Little Big Horn

Ni shagu nazad - Not One Step Back – Order No. 227 from Stalin to Chuikov's 62d Army at the Battle of Stalingrad

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