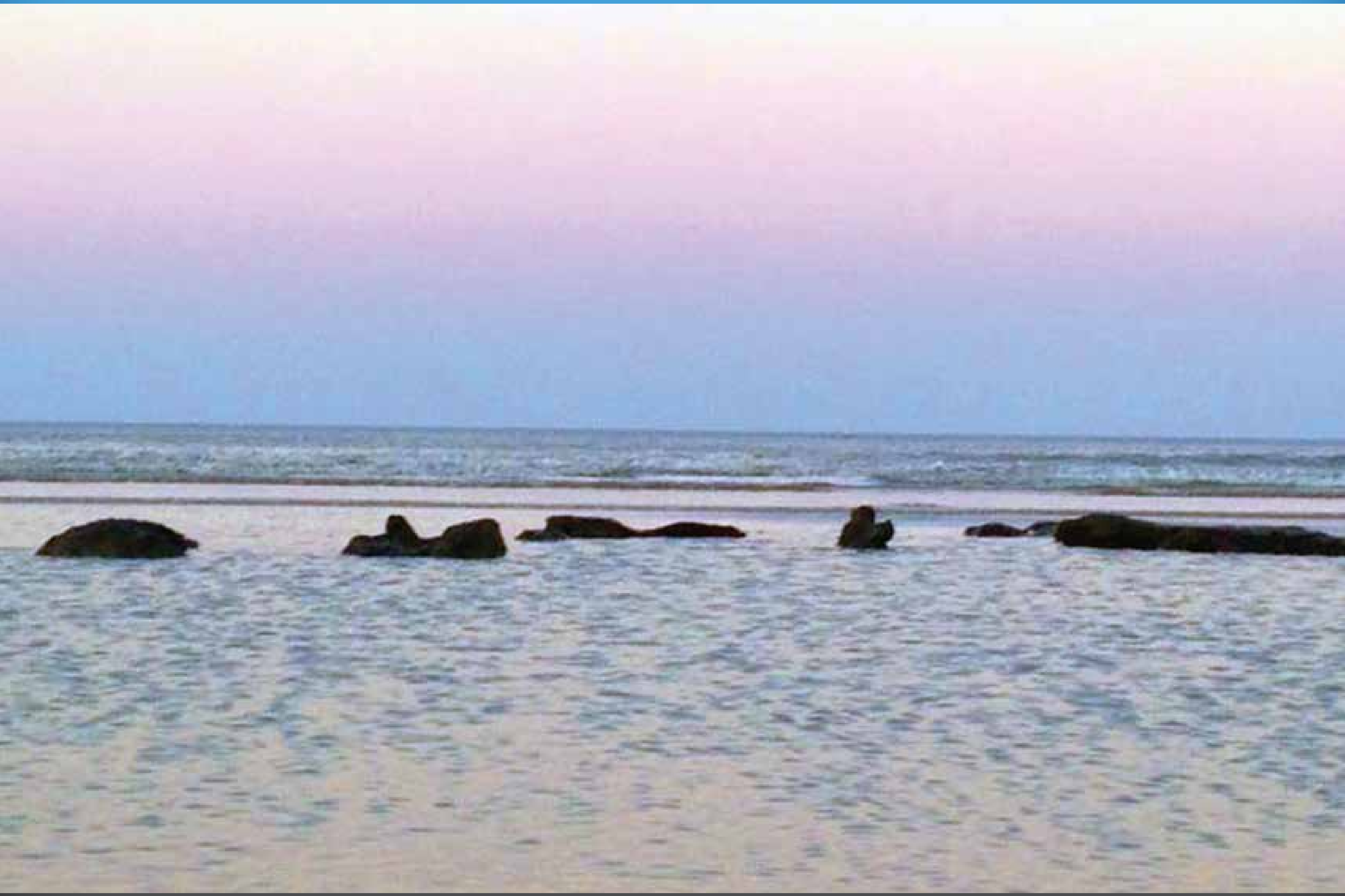
The Florida Bar

FAMILY LAW SECTION COMMENTATOR



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Anya Cintron Stern, Esq. – Editor
Anastasia Garcia, Esq.

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Articles and cover photos to be considered for publication may be submitted to Anya Cintron Stern, Esq. (anya@anyacintronstern.legal), or Anastasia Garcia, Esq. (agarcia@anastasialaw.com), Co-Chairs of the Commentator.

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ON THE COVER: Photograph courtesy Susan Schultz Waller

INSIDE THIS ISSUE

Rebuttal of Expert Valuator

By Thomas Gillmore, CPA, ABV, CFF, CFE Winter Park, FL

Many family law attorneys constantly ask how to best counter an expert financial professional and/or business valuator. Although a retained financial professional could tailor questions to your specific case, I herein propose a set of questions to help the family law attorney rebut an expert valuator. The subject business in this sample set of questions is a restaurant, Yummy Foods. The subject year of the business is 2017. The names of the parties are fictional names. When reviewing these questions, there may be terms included herein that are unfamiliar to you, but look on the bright side, consider it a guide as to what you may look forward to learning about.

Advocacy

- Mr./Ms. Expert on page 6 of your report, you state that you performed this valuation in conformity with the AICPA Statement of Standards for Valuation Services No." (SSVS)
- Are you aware of the importance of objectivity and integrity required by those standards?
- And your CVA credential requires a similar commitment to objectivity and integrity?
- Would it be fair to say that the AICPA and NACVA both frown on a valuator becoming an advocate for their client?

Limited Discussion

- Mr./Ms. Expert on page 5 of your transmittal letter, you state that your report is "limited in its discussion regarding information utilized in the valuation process."
- However, you included an eight-page discussion of marketability discounts, is that right?
- And you also included several pages of in-depth discussion regarding the operating assets of this company?
- You agree that those operating assets are necessary to generate the cash flows of this company is that right?
- You agree that a valuation of the cash flows of this company would by definition include those operating assets is that right?
- You agree that a hypothetical buyer of this business would expect the assets to stay intact when he or she took over the operations?
- You agree that a hypothetical buyer would not pay for the cash flows of the company and then <u>pay an additional amount for the equipment and other operating assets?</u>

59-60 (Hypothetical Seller)

- Mr./Ms. Expert, I would like you to read from page four of your report where you quote Revenue Ruling 59-60 as it pertains to the <u>Hypothetical Seller:</u>
  - "The price, expressed in terms of cash equivalents, at which property would change hands between a **<u>hypothetical</u>** willing and able buyer and a **<u>hypothetical</u>** willing and able seller, acting at arm's length in an open and unrestricted market, when

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neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts.

- You would agree that you are instructed by Revenue Ruling 59-60 to value Yummy Foods on the basis of a hypothetical seller and a hypothetical buyer?
- You would agree that you are to value the company as if someone other than Mr. Japin is selling it?
- You would agree that you are to value the company without a <u>specific</u> buyer in mind?

Highest and Best Use

- Mr./ Ms. Expert, you would agree that the <u>premise of value</u> is an important factor in the evaluation of the eventual selling price of a company?
- Mr./ Ms. Expert, on page 1 of your exhibits, you twice list Shannon Pratt, Ph.D., one of the most respected and prolific authors in the business valuation profession?
- Mr./ Ms. Expert, I am going to show you an excerpt of Dr. Pratt's definition of premise of value from his 5th edition of Valuing a Business (2008), McGraw Hill. pages 47 and 48.
- On pages 47 and 48, Dr. Pratt he lists four premises of value starting with Value as Going Concern, and then he lists three more premises of value for an enterprise that will undergo a form of liquidation such as (1) Value as an assemblage of assets; (2) Value as an Orderly disposition; and, (3) Value a Forced Liquidation is that correct?
- And in the last sentence of the third paragraph at the middle of page 48, Dr. Pratt states, "in either case the buyer and seller are still 'willing.' And in both cases, they have concluded a set of transactional circumstances that will **maximize the value** of the collected assets of the subject business enterprise," is that correct?
- And again, in the second sentence of the following paragraph, Dr. Pratt states, "[t] ypically, in a controlling interest valuation, the selection of the appropriate premise of value is a function of the **highest and best use** of the collective assets of the subject business enterprise." (Emphasis added).
- Mr./ Ms. Expert, I am going to show you page 19 of the NACVA professional standards issued June 1, 2017. The document lists the International Glossary of Business Valuation Terms.
- You would agree that in Canada, the term "price" should be replaced with the term "highest price," is that correct?
- Mr./ Ms. Expert, you included a **liquidation value** referred to as the Net Asset Value in Scenario 1 of your report, is that true?
- You would agree that the liquidation value does not agree with the premise of highest and best use, is that true?

2017 Versus Prior Years

- Mr./Ms. Expert, I am referring you to the <u>weight applied to the earnings shown on the top of page 13 where you applied three times the weight to 2017 compared to any other of the four years listed.</u>
- You would agree that placing a weight on a particular earnings stream is a subjective matter, requiring professional skill and objectivity?
- And you placed the highest weight on the lowest earnings stream which happened to be in 2017, is that right?
- The date of filing in this case was October, 2017, is that right?
- You would agree that a business owner facing divorce would realize they may be

required to pay support for their spouse and children, correct?

- You would agree that a spouse facing divorce **may** have an incentive to report less take-home income to avoid paying the support obligation is that right?
- In fact you are aware of the slang/ term "Sudden Income Deficit Syndrome" in the context of family law proceedings?
- Mr./Ms. Expert have you examined any audited financial statements of Yummy Foods?
- You are relying on the business owner's representation of the financial records, is that correct?
- You would agree that many business owners, large or small, seek to reduce their tax liabilities toward year-end?
- It is common for business owners to increase their expenses at year-end to show less profit?
- For example, a business owner may prepay property taxes and other expenses?
- You would agree that a restaurant would likely not be able to reduce their year-end revenues, is that correct?
- It would be difficult for a restaurant owner to refuse service to patrons in order to reduce the tax exposure on the revenue side, is that right?
- You would agree that aside from not reporting cash sales, the revenue stream is less likely to have been manipulated by a tax payer, is that correct?
- You would agree that the revenue stream is a reliable data point?
- I am now referring you to page 14 of your report which indicates that 2017 recorded the highest revenue of all previous years, is that right?
- On page 13, your report shows 2017 to be the lowest earnings year over the four year period 2014 to 2017 is that correct?
- And you ultimately gave the 2017 earnings stream the highest weight among the years you considered?
- You deemed the 2017 low-level of earnings to be more reliable than the higher level of earnings reported in previous years?

Weight - Revenues

- Mr./Ms. Expert, you would agree that the books and records of many small business owners include personal/ non-business expenses such as a fringe benefits or a perks to themselves for owning the company?
    - Such as fuel purchases?
    - Such as travel?
    - Such as automobile leases?
- How much time did you spend searching for personal expenses?
- What percentage of your time was spent searching for personal expenses?
- It would be fair to say that expensing personal use of business funds would have an impact on your valuation if they were to go unnoticed, is that right?
- Is it your opinion that the **revenues** of Yummy Foods are fairly stated on their tax returns and financial statements?
- You would agree that aside from unreported cash receipts, there would be no personal expenses coming out of those reported revenues?
- No shenanigans played on the revenues?
- You have no reason to believe the revenues are misleading, correct?
- And yet you gave the revenue multiple a zero weight in your report?

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Weight - Earnings

- You would agree that the payment of personal expenses (if they occurred) would be recorded on the profit/loss statement along with the business expenses?
- And the result after paying all of these expenses from collected revenue is what you call net operating cash flow, is that right?
- Mr./Ms. Expert on page 12 of your Yummy Foods report, you list total personal expenses for the year 2014?
- Can you read that for the court?
  - $441 miscellaneous.
  - $250 parking and tolls.
  - $1,000 association.
- You found no personal expenses for 2015?
- And for the year 2016, you list personal as well. Can you read those for the court?
  - $904 Miscellaneous.
  - $52,085 in taxes.
- And for the year 2017 you list personal as well. Can you read those for the court?
  - $150 fee
  - $12 services
- You would agree that there may be other miscellaneous expenses that were not uncovered?
- And you gave the earnings multiple 100% of the weight in your report?

Net Asset Value

- You include the Net Asset method in Scenario #1 of your report, is that correct?
- You intend for the court to consider this method as on option between Scenario #1 and Scenario #2, is that right?
- Mr./Ms. Expert, I would like you to read from NACVA instructions for using the Asset Based Approach to valuations. The part where they reference Revenue Ruling 59-60:
  - "The value of the stock of a closely held <u>investment or real estate holding company</u>, whether or not family owned, is closely related to the value of the assets underlying the stock. <u>**For companies of this type**</u> the appraiser should determine the fair market values of the assets of the company…"
- You intend for the court to consider this method as on option between Scenario #1 and Scenario #2, is that right?
- Is Yummy Foods an investment holding company?
- Is Yummy Foods a real estate holding company?
- Did you follow the guidelines of Revenue Ruling 59-60 as it pertains to valuing investment or real estate holding companies?
- Is Yummy Foods going out of business to your knowledge?
- Is Yummy Foods under threat of liquidation?
- Yummy Foods generated over $1m in revenue in 2017, is that right?
- Mr. Japin is in good health as far as you know?
- Mr. Japin is a competent business man?
- Mr. Japin knows how to make a profit?
- Does the net asset value represent the highest value that a hypothetical seller could possibly hope for?
- Does the net asset value represent the lowest value that Mr. Japin could possible hope for in this dissolution of marriage proceeding?
- You would agree this net asset value would be a good result for Mr. Japin if the judge were to accept your calculations under scenario #1, is that right?

- And you included it here in your report because it might result in a favorable outcome for your client?

Double Dip

- Mr./Ms. Expert, I would like you to read from page four of your report where you quote Revenue Ruling 59-60 as it pertains to the Hypothetical Seller:
  - "The price, expressed in terms of cash equivalents, at which property would change hands between a **hypothetical** willing and able buyer and a **hypothetical** willing and able seller, acting at arm's length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts.
- When presenting the double-dip theory in Scenario #1, you are referring to a hypothetical seller as required by Revenue Ruling 59-60, is that right?
- Or are you referring to Mr. Japin specifically in the Scenario #1 double-dip?
- Would a hypothetical will seller need to consider a double-dip argument under Revenue Ruling 59-60?
  - The answer is no.
- Mr./Ms. Expert, Revenue Ruling 59-60 articulates the definition of Fair Market Value definition, is that right?
  - Are you aware of the concept of perpetuity?
  - You would agree that the revenues and earnings of Yummy Foods are considered to be ongoing in perpetuity for the purposes of your valuation?
  - Are you aware of any enterprise that somehow decreased in value because the owner used the profits to pay alimony or child support?
  - Does it make a difference to the future value of the firm (in perpetuity) whether or not the profits were historically used to pay alimony?
  - You would agree that regardless of whether alimony was paid from the profits, the owner may sell the enterprise at some date in the future right for its full fair market value?
  - Or the owner may decide to gift the enterprise to family members to whom the cash would flow in perpetuity?

No Compete

- Mr./Ms. Expert, you pay a subscription fee to obtain the Direct Market Data shown on page 15, 16, and 17 of your report is that right?
- This database(s) is/are relied on by members of NACVA is that right?
- Members of the valuation community normally rely on this same database(s) for their valuation work?
- You agree that it is common for valuators to rely on this type of database to obtain an idea of what the pricing multiples are for the subject industry?
- Your colleagues regularly use this database information as a type of sanity check is that right?
- And you downloaded 108 market transactions from this subscription database(s)?
- Mr./Ms. Expert, on page 3 of your transmittal letter, you stated that the market approach was considered but ultimately not weighted because "it cannot be determined if any of these transactions included a non-compete."

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- So, you ignored the 108 completed transactions because a non-compete was not evident in any of them?
- You would agree that the database information you paid for is not suitable for use in the Yummy Foods valuation assignment?
- Is it common in your profession to include three or four pages of information that is ultimately discarded as valueless?
- You would agree that a database generating information that is valueless to you would also be valueless to any of your colleagues who paid for the subscription, is that right?
- You would agree that a non-compete for Yummy Foods **could be** <u>negligible</u> in value, is that right?
- You would agree that a non-compete for Yummy Foods **could be** <u>valued</u> as low as $10,000 for example, is that right?
- Mr./Ms. Expert on page 19 of the Yummy Foods report you show a revenue-based value of $236,296, is that right?
- And you excluded the $236,296 value because it might contain a non-compete?
- But you chose to include the Net Asset Value of $88,748 on your report as "Scenario #1"?
- And you included another low value of $140,540 in Scenario #2 based on the earnings approach?
- Would it make a difference in the valuation of a non-compete if the hypothetical seller chose to compete in the first year following a sale of Yummy Foods?
- Would it make a difference in the valuation of a non-compete if the hypothetical seller chose to compete in the second or any other year following a sale of Yummy Foods?
- And it would be unlikely for a person of good moral character to compete in any event regardless of whether it was the first, second, or third year following the sale, is that right?

- Have you calculated the probability of a hypothetical seller competing during the first year following a sale?
- Have you calculated the probability of a hypothetical seller competing during the second year or any other year following a sale?
- You agree it would make a difference if the probability of competing was very low…. for example if the person selling was retiring or moving to another state, right?
- You agree that it is the hypothetical-seller we are talking about here, is that right?
- It is not Mr. Japin specifically?
- You would agree it is important to know the statutory time-limitations for no-competes in the State of Florida?
- Did you calculate the value of a non-compete on behalf of Yummy Foods?

Market Comps

- On pages 15 through 17 of the Yummy Foods report, you list approximately108 completed transactions, is that right?
- 108 market comps?
- And those completed transaction records are <u>conceptually</u> similar to a person selling their home and looking for market comps, right?
- And you weighted each of those transactions with regard to each one's applicability to Yummy Foods, is that right?
  - Column 4 of each page 15, 16, and 17.
- And at the bottom of page 17, you calculated the weighted average multiplier for <u>revenues</u> based on those market comps?
  - The revenue multiplier is 33.4%?
- And you calculated the weighted average multiplier for earnings based on those market comps?
  - The earnings multiplier is 1.23%?
- Did you rely on either of these two completed transaction multipliers?
- You found them both to be irrelevant for your purposes?
- You found your own multiplier to be more appropriate and more reliable than these 108 transactions?
- What is the purpose of providing these three pages of completed transactions to the court if you deemed them to be unusable?

Revenue versus Earnings

- Mr./Ms. Expert, I will be referring to the 33.4% revenue multiplier that we just spoke of (page 17).
- You applied that 33.4% multiplier to the weighted average revenues of $1,011,570 as shown on page 14?
- And the result was $337,566 as shown on page 18?
- You split this two-step piece of information across five separate pages of your report, 14 and 18 before revealing the result, is that true?
- This $337,566 value is quite a bit higher than the $141,000 value you reported on page 19 of your report, is that right?

Value – Revenue Method

- Referring to the $337,566 value showing on page 18 of your report:
- And if I take the $337,566 value and divide that by the 1.23 earnings multiplier you listed on the bottom of page 17, I would get weighted average earnings for Yummy Foods based on the 108 comparable transactions from the marketplace, is that right?
  - And that earnings/ revenue stream before taxes, depreciation, and

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interest would be $274,444 based on this simple math exercise, is that right?

- And yet your calculation of earnings is a mere $52,524, is that right?
- This earnings discrepancy created a reduction in market value of $272,962, is that right?

Revenues	Multiple	Market Value
$1,011,570	0.334	$337,566

Earnings B4 Taxes	Multiple	Market Value
$274,444	1.23	$337,566

Implied earnings base using Revenue-based Market Value divided by opposing expert's market multiple of 1.23

Earnings B4 Taxes	Multiple	Market Value
$52,524	1.23	$64,605

Unlikely earnings base calculated by opposing expert without market verification.

DISCREPANCIES	
Earnings	Market Value
-$221,920	-$272,962

Effects of valuation discrepancies created by opposing expert.

Capitalization Rate

- Mr./Ms. Expert, I am taking you to page 11 of your Yummy Foods report:
- You calculated a 29.4% capitalization rate, is that right?
- And 20% of this number comes from company specific risks?
    - (2) on this report
- And those company specific risks include local market factors as stated in note #2 on this page?
- And the company specific risks include key-man discounts; also stated in note #2 on this page?
- How much of the 20% comes from local market factors?
- Did you discuss any specific local market factors in your report?
- How much of the 20% comes from the key-man discount?
- Did you discuss a description of the key-man attributes in your report?
- What other company specific risks are included in this 20% number?
    - How much of the 20% comes from _________you just mentioned?
    - How much of the 20% comes from _________you just mentioned?
    - How much of the 20% comes from _________you just mentioned?
    - How much of the 20% comes from _________you just mentioned?
    - How much of the 20% comes from _________you just mentioned?
- Mr./Ms. Expert, I am taking you to page 11 of your Yummy Foods report:
- Regarding the Key-Man discount:
    - You would agree the current owner/ key-man is personable?
        - This attribute does not rise to a level of significance above any other person would be buying this company, is that right?
    - You would agree the current owner/ key-man is likeable?
        - This attribute does not rise to a level of significance above any other person would be buying this company, is that right?
    - You would agree the current owner/ key-man is knowledgeable in this industry?
        - This attribute does not rise to a level of significance above any other person would be buying this company, is that right?
    - How many patrons come to see the owner/ key-man personally at the Yummy Foods location?
    - You would agree that most patrons come for the food and the community atmosphere, is that right?
    - You would agree that a buyer of this company would very likely be an

- established member of the Cuban community, is that right?
- You would agree patrons would not stop coming to Yummy Foods simply because the current owner/ key-man was no longer in the picture?

Error – WACC

- Mr./Ms. Expert, you would agree that the capital structure of a business comes from owner funding and a lender may provide additional funding?
- The difference between those two funding sources is referred to as equity, is that true?
- Similar to the equity I have in my home?
- The owner's equity is **only a portion** of the overall value of the enterprise, is that true?
- So we have equity capital and debt capital which when combined equals totals enterprise value of capital, is that correct?
- Mr./Ms. Expert, on page 12 of your report you added-back interest to the earnings stream which was then capitalized to determine the company value, is that correct?
- And in so-doing, you calculated debt-free cash flows to the company, is that correct?
- And you capitalized that earnings stream at 29.4% as shown on page 11 of your report?
- You would agree that the risk-rate of debt is the interest rate charged on that debt, is that correct?
- The bank estimates their risk and then demands a higher or lower rate of interest based on the risk involved?
- Did you ask the owner what the interest rate is on the debt that you removed from cash flow stream?
- You would agree that the cost of debt/ the interest being paid by Yummy is probably less than the 29.4% risk rate on page 11 of your report, is that correct?
- You would agree that NACVA provides guidance on how to account for the equity risk rate versus the debt risk rate, is that true?
- Mr./Ms. Expert I am handing you a printout from NACVA chapter five titled "Weighted Average Cost of Capital."
- You are familiar with the Weighted Average Cost of Capital concept?
- Please read out-loud the second sentence of paragraph #2.
    - "WACC is used when the valuation analyst want to determine the value of the **entire capital structure** of a company, such as in an acquisition scenario."
- The guidance outlines an industry-approved method for valuators to evaluate the risk of debt separately from the risk of equity, is that correct?
- This W.A.C.C. method is <u>customarily used by valuation professionals in your industry when the subject company has debt on the books?</u>
- In fact, NACVA provides five pages of instructions on this topic to assist valuators in getting their facts straight on this topic, is that correct?
- Mr./Ms. Expert, I am handing you another printout from NACVA chapter five where it talks about the build-up method you calculated page 11 of your report:
- Please read out-loud the first sentence of the first paragraph beginning with "Ibbotson Associates"
    - ..... "uses both historical and current inputs to estimate the cost of **equity capital** for a company. "
- You agree that term <u>equity capital</u> is not the same term as entire capital structure, is that true?

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- And, again, the difference in the two terms is a reference to the debt capital that is added to the equity capital to determine the overall capital structure, is that true?
- On page 13 of your report, you report an **equity value** of $140,540 is that correct?
- Did you determine the amount of debt owed by Yummy Foods?
- Did you add the value of any debt to the equity value of $140,540 to determine the total value of the company?
- The 2017 tax return shows $34,039 interest payment so there must be a significant amount of debt to go along with it?
- Assuming a bank charged 10% interest the amount of debt on the books, would be $340,390 is that correct?
- And the value of the equity plus debt would be the total company value?
- Did you report the total company value in your report?
- Mr./Ms. Expert when considering the capitalization rate on debt-free basis NACVA instructs the valuator to determine the ratio of debt to equity, is that true?
- And that ratio is used to determine an applicable capitalization rate for the entire capital structure?
- And the entire capital structure risk-rate is then used to determine the entire company value, not just the equity value is that true?
- And the ratio of the debt to equity on Yummy is something other than zero correct?
- We know there is debt being paid, is that true?
- Assuming the debt is $100,000 as shown on the 2017 tax return the ratio would be the equity value of $140,540 and the $100,000 is that right?
- Equity is 58% of the total and debt is 42% of the total?
- And the price of equity is 29.4% while the interest being paid is roughly 10% (minus the tax rate) or 7.9% is that right?
- And 58% of the equity rate is 17.2%, is that right?
- And 42% of the tax-affected interest rate is 3.3%, is that right?
- So the overall all capitalization rate for debt-free cash flows would be 20.46%, is that right?
- And applying this 20.46% enterprise capitalization rate to the $41,384 debt-free cash flows appearing on page 13 of your report, the total company value would be $202,267, is that right?
- Not the $140,540 you calculated?

WACC - Yummy Foods		Value ($M)	Weight
Equity Risk Rate	29.40%	140,540	58.4%
Yield on Debt	10.00%		
Tax Rate	21.0%		
Debt	7.90%	100,000	41.6%
Total	**20.46%**	**240,540**	**100.0%**

Error – Earnings Multiple

- Mr./Ms. Expert, on page 11 of your report you calculated a capitalization rate of 29.4% which equates to an earnings multiple of 3.4, is that correct?
  - 1/divided by the risk rate.
- And you agree that if I take the number one (1) and divide that by your cap rate of

29.4% I would get a market multiplier of 3.4?

- And vice-versa if I take one (1) and divide that by the market multiplier I would get the 29.4%, cap rate also known as the risk rate?
- Referring to the 1.2.3 market multiplier shown on page 17 of your report:
  - You would agree that if I divide one (1) by 1.23 multiplier, the result is an 81.3% risk rate, is that correct?
- So you ignored the 81.3% market-comp risk rate in favor of your build-up rate of 29.4%, is that correct?

Earnings Multiple to Risk Rate		
Numerator	1	
Divided by	81.3%	Risk Rate
Market Multiple	1.23	Result

Opposing Expert's Rate to Earnings Multiple		
Numerator	1	
Divided by	29.4%	Risk Rate
Market Multiple	3.40	Result

Error - Cash to Earnings

- Mr./Ms. Expert, please read your description of the 3% increment where the Net Earnings Discount Rate exceeds the Net Cash Flow Discount Rate.
- You would agree that there is a transition from net cash flows to net earnings by way of starting with net cash flows and then adding-back depreciation, interest, taxes, and non-business expenses?
- And in fact, you added back the items of depreciation, interest, and taxes on page 12 of your report, is that right?
- When calculating the earnings stream on page 13 of your report, you relied on historical data from 2014, 2015, 2016, and 2017, is that right?
- It is fair to say that those historical earnings streams from 2014, 2015, 2016, and 2017 are what the hypothetical seller is selling?
- This historical earnings stream is what the hypothetical buyer expects to receive going forward in to the future?
- Did you make any further adjustments to the future earnings stream that that the hypothetical buyer should be aware of?
- Mr./Ms. Expert, I am going to hand you a printout of NACVA's Calculation of Cash to Earnings Factor as described in Chapter Five titled Capitalization/Discount Rates; Fundamentals, Techniques & Theory.
- Mr./Ms. Expert, please read your description of the 3% increment where the Net Earnings Discount Rate exceeds the Net Cash Flow Discount Rate.
- Have him read the first line:
  - "When future earnings approximate future cash flows, no adjustment is necessary to convert the capitalization rate."
- Have him read the second to last line:
  - "However, when the analyst expects that future cash flows will NOT be consistent with future earnings, adjustment of the capitalization rate is necessary."
- It would be fair to say the NACVA cash to earnings adjustment is isolated to instances where future cash flows are expected to be significantly different from current-day, is that right?
- But you included this adjustment in your calculation of the capitalization rate anyway?
- And on page 12, you have another Cash-to-Earnings calculation where you add back

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depreciation, interest, and a few personal expenses, is that true?

- Is there any difference between the Cash-to-Earnings factor on page 11 versus the Cash-to-Earnings adjustments you made on page 12?
- You would agree that you have double-counted the Cash-to-Earnings factor, is that right?
- It would be fair to say that this mistake was beneficial to your client?

Value – Risk Method

- Referring to page 13 of the Yummy Foods report where you have an earnings stream of $41,384:
    - Dividing that earning stream by your capitalization rate of 29.4% comes out to be $140,540 as shown on page 13 of you report?
    - Dividing that earnings stream by a smaller cap rate means the value of the firm increases, is that right?
    - For example, dividing that same **2017** earnings stream by a risk rate of 20% would give you a value of $206,920 is that right?
    - And if you had relied on the **2016** earnings stream of $54,416 a 20% capitalization rate would give you a value of $272,000 is that right?
    - And if you capitalized the **2015** earnings stream, the value would be $474,845, is that right?
- But you chose to put 3x more weight on the 2017 earnings than any of the other years?
- You would agree that a discussion of your decision to apply a 3x weight on 2017 would help us to understand your reasoning, is that right?
- But in fact you provided no discussion on this topic in your report.
- And you provided no narrative in your report to explain how the highest revenue-producing year (page 14 of your report) resulted in the lowest earnings (page 13 of your report), is that true?

DLOM & Holding Period

- Mr./Ms. Expert, you agree that the inability to quickly sell an asset is an important consideration of fair market value of a business?
- The shorter period of time to sell equates to a reduced marketability discount all else being equal?
- And in fact you included a marketability discount in your valuation of Yummy Foods in the risk build-up process?
- You included an eight-page discussion on this topic for us to follow- along with your reasoning, is that correct?
- Mr./Ms. Expert, in the process of valuing a company you would agree that ultimately the numbers should make economic sense?
- You would agree that historical treatises and historical scholarly studies should be scrutinized for applicability to today's marketplace?
- Those historical references and studies should not be applied haphazardly?
- **Inapplicable** historical studies should not be averaged in haphazardly along with **relevant** data, is that right?
- The discount for marketability/ liquidity should be a reasonable estimate of the **actual costs** that will be incurred in getting cash from the sale of an asset?
- And when you calculated the marketability/ liquidity discount for Yummy Foods, you estimated the reasonableness of those numbers, is that correct?

- The reasonableness of the $101,270 discount shown on page 18 of your report?
- Your eight-page discussion on marketability lists twenty restricted stock and IPO studies, is that right?
  - See page 2 of the marketability report.
- You would agree that the IPO studies reflect the stock prices of publicly traded companies before and after the issuance of each company's Initial Public Offering on NASDAQ or a similar stock exchange?
- You would agree the restricted stock studies show the price of a company stock for certain individuals who cannot immediately trade the stock due to timing the restrictions set forth in SEC Rule 144; also traded on NSDAQ or a similar stock exchange?
- And you calculated a marketability discount for Yummy Foods based on these studies as shown on page 18 of your report?
- It is fair to say that Yummy Foods has not issued any restricted stock, is that true?
- And it is fair to say Yummy Foods has not applied to the SEC for an initial public offering of its stock, is that true?
- When referring to the holding period of a restricted stock study, you are incorporating a reference to SEC Rule 144, is that right?
- And you know that rule 144 was originally issued in **1933** under the Securities act which is memorialized in 17 CFR § 230.144?
- More specifically, you are referencing 230.144 (d) the general rule on Holding Period requirements?
- And you realize that those holding period requirements have changed over the years from 1933?
- In fact they changed substantially from the time of the first study in 1966 to the most recent study in 2012?
- In fact the holding period prior to April 29, 1997 was two years, is that right?
- And after April, 1997 the holding period was down to one year, is that correct?
- And as of February 15, 2008, the holding period was reduced even further to where it is at currently, which is six-months, is that right?
- Would it be fair to say that only four out of the twenty studies reflect a holding period that is similar to today's marketplace?
  - Harris/TVA study 2007-2008 18.1%
  - FMV Opinions Study 1980-2010 20.7%
  - Pluris DLOM Study 2001-2012 22.4%
  - SRR Restricted Stock Study 2005-2010 9.3%
- And the average of these four studies is **17.6%**?
- And what discount rate did you incorporate i to your report on page 18?
  - **30%**
- And you did incorporate a marketability discount rate in to the capitalization rate that you say is "assumed to be implicit in the calculated build-up rate?"

DLOM – Actual Costs

- Mr./Ms. Expert, you recently established that Yummy Foods is not going to be listed on the NASDAQ or any other stock exchange. The company has no restricted stock nor will it be applying for an initial public offering.
- The company will not incur a cost or marketability discount in that sense, is that true?
- You would agree however, a hypothetical seller of Yummy Foods might incur a brokerage fee to sell the company, is that right?
- And there may be attorney fees?
- And there may be some accounting fees to pay?

continued, next page

Rebuttal of Expert Valuator

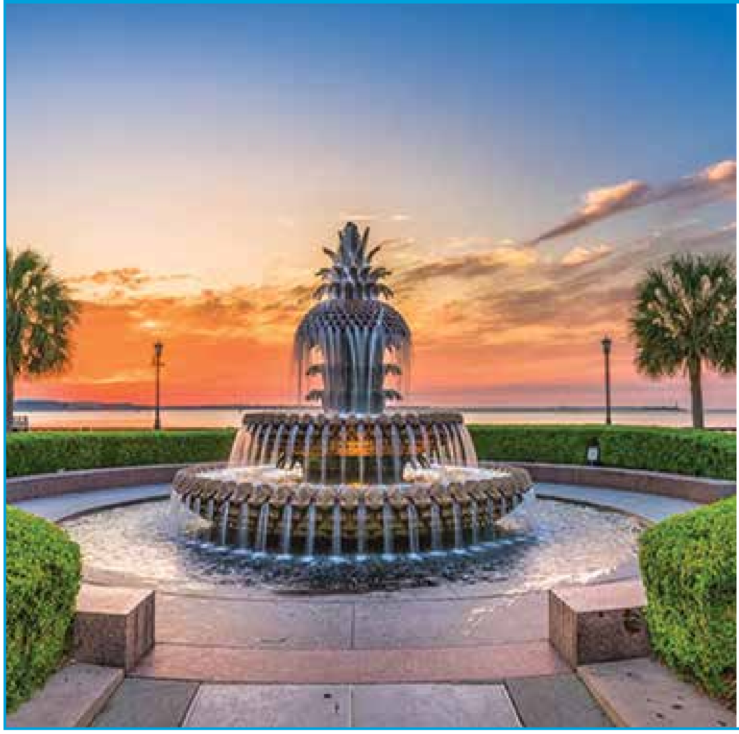
CONTINUED, FROM PAGE 45

- And there would be a discount for the time-to-sell requirement?
- In your opinion as a valuator, how much would the brokerage fee be?
  - Roughly 10% of the first million or $25,000 assuming the company is worth $250,000?
- The broker would spend his or her time marketing the company and introducing potential buyers to the hypothetical seller?
- Or the hypothetical seller could reduce or eliminate the brokerage fee by marketing the firm himself or herself?
- The cost for an attorney to draft the sale documents would be roughly $5,000?
- The cost to get the books cleaned up/ or audited would be another $5,000?
- Discounting the expected sale price of $250,000 on a twelve-month CD earning 2% the time- value of money/ present value discount would be $5,000, is that correct?
- So, you would agree that the actual marketability costs would include the broker fee, the attorney, and the accountant, and a present value discount from the expected sale date?
- Adding all of these costs would come to $40,000, is that right?
- But you came up with a discount of $101,270 without considering any of these specific costs, is that right?

About Tom Gillmore, CPA, ABV, CFF, CVA

Tom is a forensic accountant serving the Central Florida legal community, business owners and individuals from his office in Winter Park, Florida since January, 2009.

You can reach Tom at tomg@GillmoreAccounting.com and https://gillmoreaccounting.com/



FAMILY LAW SECTION

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