

*National Business
Institute*

Forensic Business Valuation for Attorneys

Wednesday, October 27, 2010



USING THE VALUATION RESULTS

- **Introduction and Top Items to Remember**
- **Why Valuations Are Needed**
- **Theories of Damages**
- **Overview of Valuation Process**
- **Valuation Approaches for Attorneys**
- **Key Points for Attorneys**
- **References and Case**

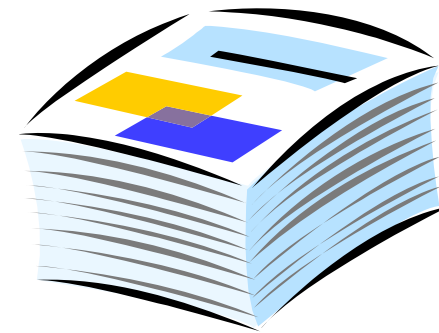
PRESENTING THE VALUATION Types of Deliverables



**Oral Consultation
(Not Preferred)**



**Summary Report
or Calculations
(Preliminary Reports)**



**Full Narrative Report
(Preferred)**

UTILIZING EXHIBITS AND SOURCE DOCUMENTS



PRESENTING THE VALUATION

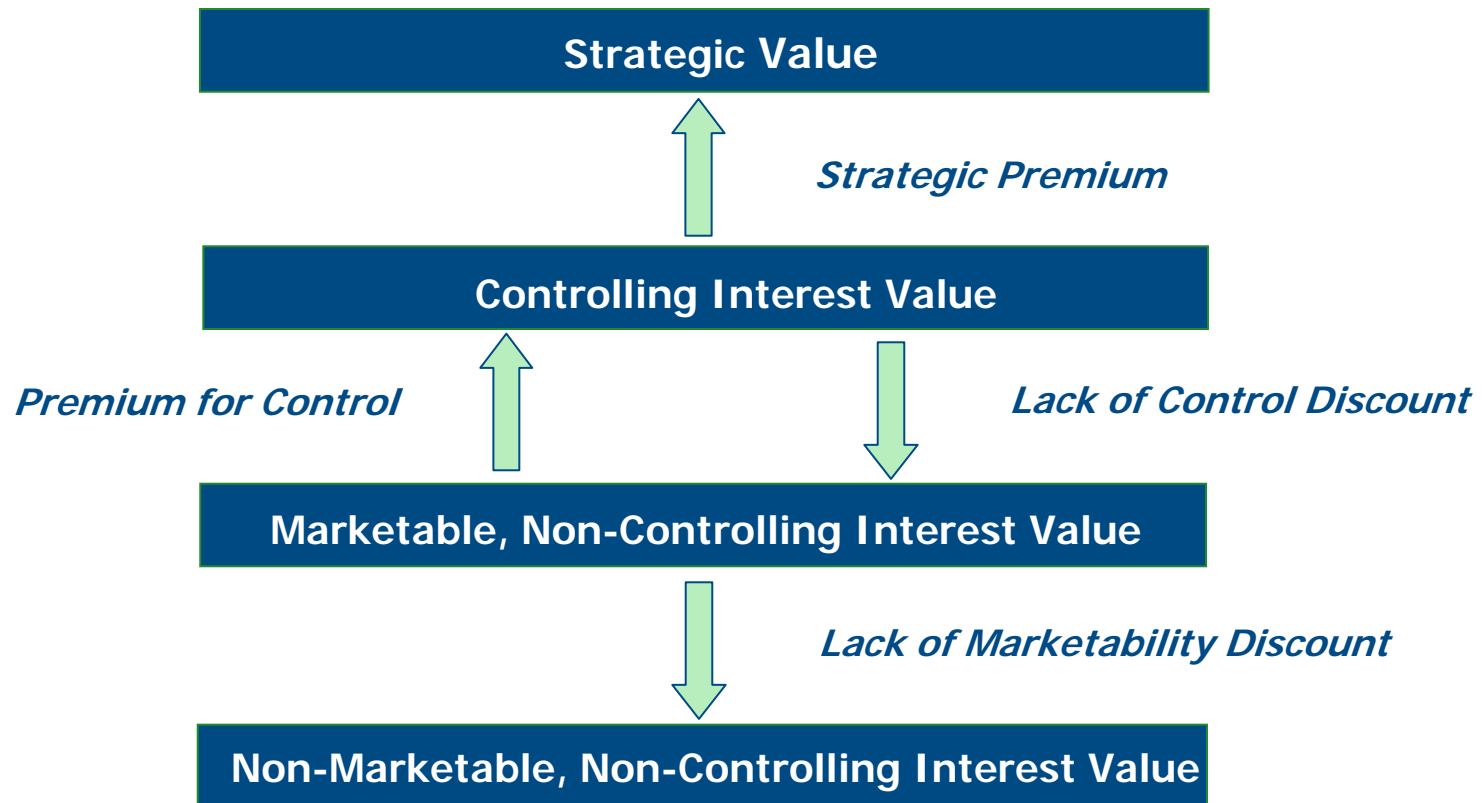
EXHIBITS

- **Valuation Report**
- **Financial Schedules**
- **Key Valuation Calculations**
- **Comparable Company Valuation Metrics**
- **Quantitative versus Qualitative Factors**

SOURCE DOCUMENTS

- **Other Valuations or Prior Valuations**
- **Market Data (i.e., transactions)**
- **Company Financial Records**
- **Bank Loan Documentation**

Standards of Value Different from Levels of Value

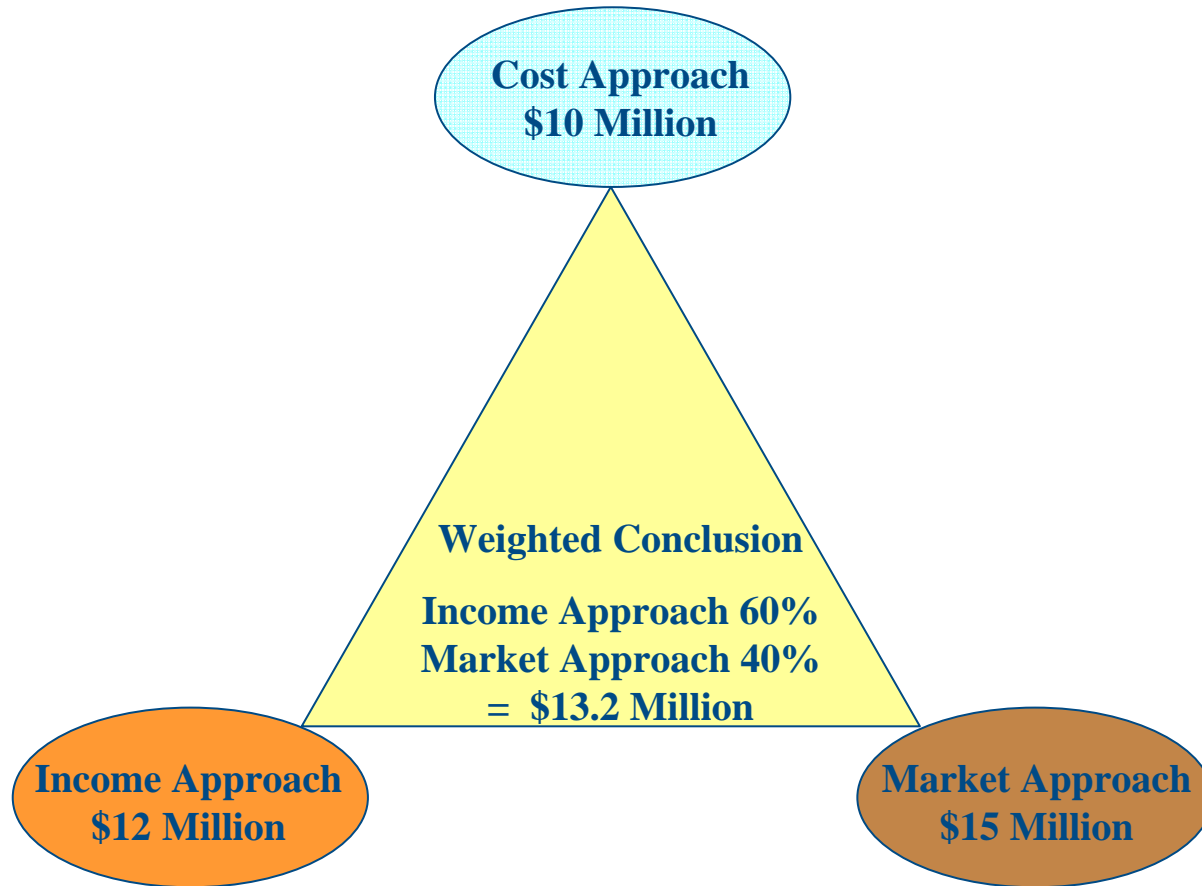


Application of Discounts

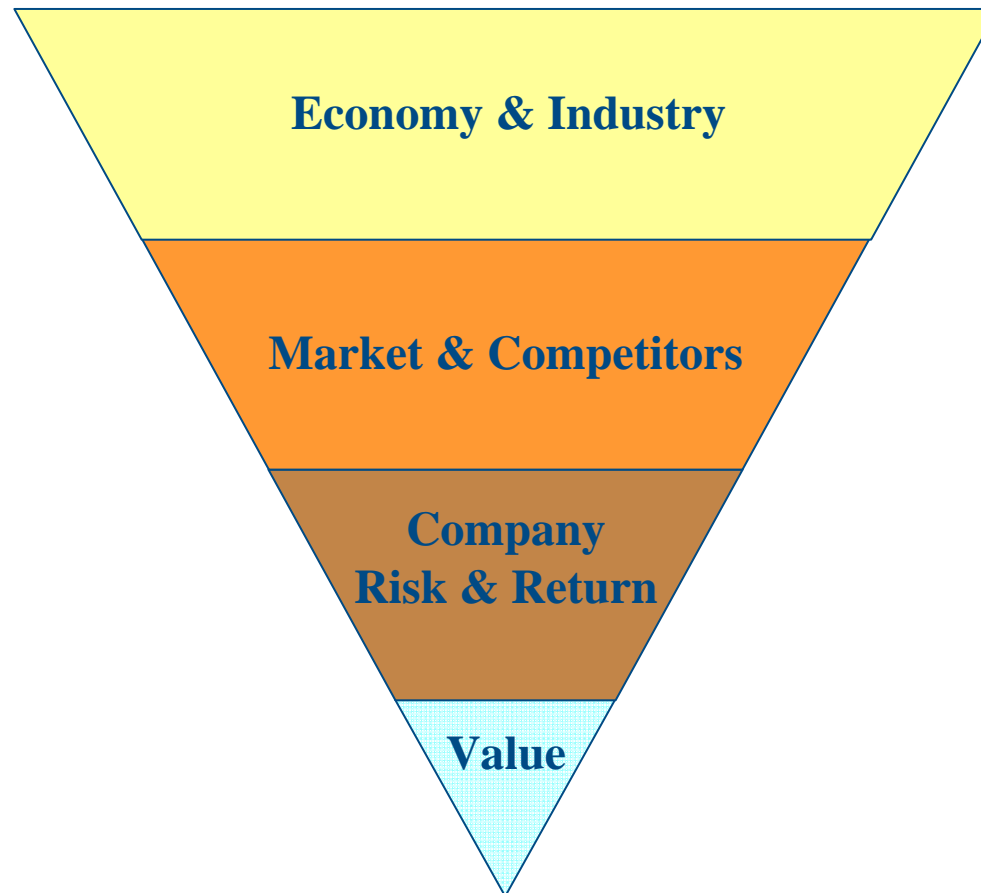
Adjusted Net Asset Value (Marketable, Controlling Basis)		\$ 13,200,000
Percentage Ownership Interest being Valued		<u>1%</u>
Value of Subject Interest (Marketable, Controlling Basis)		132,000
- Discount for Lack of Control	15%	<u>(19,800)</u>
Value of Subject Interest (Marketable, Non-Controlling Basis)		112,200
- Discount for Lack of Marketability	35%	<u>(39,270)</u>
Value of Subject Interest (Non-Marketable, Non-Controlling Basis)		<u>\$ 72,930</u>
ROUNDED CONCLUSION OF VALUE		\$ 73,000
<i>(Non-Marketable, Non-Controlling Basis)</i>		
<i>Combined Discount (Note Is Multiplicative, Not Additive)</i>	50%	45%

The above is for discussion purposes only. Note that discounts for lack of control and lack of marketability are determined on a case-by-case basis. The discounts shown above are not applicable in all situations.

Reconciliation of Value



Valuation Funnel



COORDINATING CLIENT & VALUATOR TESTIMONY

Keep the expert involved in the discovery process (Engage as Early as Possible)

Rely on the expert with others and counsel through formal discovery and otherwise to develop the facts

The wrong facts can be devastating - Example

- **Plaintiff used a Professor**
- **Professor wrote lengthy report concluding \$520 million in lost profits in a case of failed financing for startup in China**
- **Because of the Professor's possessive view of the limited information available from China, he did very little independent research for the report prepared discovery closed**
- **Defendant used team of CPA's, Forensic Accountants, Investigators**
- **Defense counsel had team help prepare deposition questions**
- **Defense counsel team understood in-country access to information and prepared devastating rebuttal report**
- **Plaintiffs' professor clearly wrote about the wrong industry, based on the wrong facts. Plaintiffs' professor pure speculation**
- **Case settled without Defense expert being deposed**

Use of Expert Witnesses

No expert can work on his or her own

- Counsel has to know what is going on and what the expert is using both in theory, required by standards, regulations, statutes and case law
- Testimony ultimately will be guided by Federal and State statutes, regulations and case law as well as professional standards
- Is it a GAAP issue, a GAAS issue?
 - ❑ Accounting Standards - How should things be reported and recorded and accounted for?
 - ❑ Audit Standards - Auditors make an opinion whether what is reported is done so in accordance with GAAP without material variance?
- Does counsel need to understand the FASB (Financial Accounting Standards Board) views on GAAP? (Why the Board adopted the Standard?)
- Is counsel familiar with the “Current Text” which codifies GAAP based on subject matter and is updated yearly by AICPA?
- Counsel and/or expert may or may not be familiar with prevailing law or regulations. Each must educate the other and take nothing for granted

Use of Expert Witnesses

Counsel must well utilize the consulting and testifying experts and well prepare them and vice versa

- **The expert needs complete familiarity with the facts**
- **The expert should “be in the room” for depositions and trial testimony**

The testifying CPA through training, experience and specialized knowledge should be able to provide a reasonable basis for the conclusions, report and testimony

- **Identify appropriate facts**
- **Determine the amount in question**
- **Within a reasonable degree of accounting certainty**

Use of Expert Witnesses

How wide open are the expert's eyes to what could be?

- **Evidence of single mindedness**
- **Things may interpreted many ways**

How multi-dimensional does the expert think?

Overcome the fact that accounting issues may appear very black and white

Prepare expert for testimony and for possible *Daubert* challenge

➤ **Attack on**

- Skills**
- Knowledge**
- Experience**
- Training**
- Facts**
- Assumptions**
- Report**

Defendable Valuations



Valuation Report & Testimony

- **Key Exhibit is the Valuation Report**
 - **Purpose & Standard of Value**
 - **Adequate Description**
 - **Methods match the Level of Value for the Subject Interest**
 - **Understand Limiting Conditions**
 - **Appraiser Qualifications**
- **Testimony must be based on the Report and its contents**
- **Weaknesses in all valuations**
- **Reasonable Degree of Economic Certainty Does Not Mean “More likely than Not”**

Summary of Key Points for Corporate Attorneys



Summary of Key Points for Corporate Attorneys

- **Understanding Approaches, Methods, and Assumptions**
- **Importance of Using Appropriate Valuation Date**
- **Properly Defining Engagement, Standard of Value, and Property To Be Valued**
- **Appraisers Qualifications and Standards**
- **Explanation of Reconciliation of Value and Valuation Conclusion**
- **Levels of Value**

Summary of Key Points for Trial/Litigation Attorneys



Summary of Key Points for Trial/Litigation Attorneys

- **Scope of Work**
- **Understanding Approaches, Methods, and Assumptions**
- **Importance of Using Appropriate Valuation Date**
- **Properly Defining Engagement**
- **Appraisers Qualifications and Standards**
- **Understanding Assumptions Used to Challenge Other Expert**
 - Reasonableness of rates of return and applied discounts
 - Application of all applicable approaches and methods
 - Permanent damage (lost value) vs. temporary loss (lost profits)
- **Levels of Value**

Handouts and Reference Material



Handout – ABC Company Case Study

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