Business Valuation

Business Consultant Qualified to Testify On Valuation
Approach to Valuation Deemed Reliable
Willis v. TRC Companies, Inc., Slip Copy, 2008 WL 3911040 (W.D. La., Aug. 25, 2008)

Frank Willis sued TRC Companies, Inc. over a stock purchase agreement ("SPA") and a related employment agreement signed when TRC acquired his company Willis Engineering, Inc. (WEI). Willis alleged breach of contract, and negligent/fraudulent misrepresentation. Willis filed a pre-trial *Daubert* motion to exclude the testimony of TRC's expert, Kim Early, as to the value of WEI before the acquisition and after Willis left the company, and the projected amount of Willis' damages. Willis claimed that Early was not qualified as a business valuation expert, that his opinions were not based on known or testable methodology, and that his opinions were not supported by verifiable facts.

The District Court held that Early was qualified to testify as an expert in valuing engineering businesses, and that his testimony was both relevant and reliable for admission under FRE 702 and 703. Although Early did not teach in the business valuation field, was not published, and held no business valuation certifications, he was a C.P.A. with a Master's Degree in Business Administration and in 30 years of business spent much of his time valuing and acquiring engineering firms. Early currently was a valuation consultant with specific focus on engineering and consulting businesses.

Early's opinions were deemed relevant, because the value of WEI before the acquisition and after Willis' departure was relevant to the issue of damages.

The Court considered Early's methodology to be reliable, because he used an accepted approach by comparing transactions involving companies with similar characteristics, which was a guideline transaction model of valuing businesses under the market approach, which had been tested and peer reviewed.

Willis' arguments that Early did not have enough knowledge about the claims in the litigation, failed to account for the resources Willis anticipated receiving and that his report had been stripped of negative information about the due diligence conducted by TRC, went to the weight, not admissibility, of his testimony.

The Court also held that testimony by Willis' expert, John W. Dean, as to the value of Willis' projected salary and benefits was admissible, except for projections beyond the three years of the employment agreement. Whether TRC would employ Willis beyond that contractual period was speculation.

The Court also held that in proving the value of the company of which Willis was allegedly defrauded, Dean's use of a 20% growth rate was relevant, reliable and admissible, in that it relied upon exhibits to the SPA, personal meetings and telephone conferences with Willis, excerpts from the deposition of TRC's CEO and emails between Willis and TRC representatives.

The Court thus granted in part, and denied in part, the respective motions *in limine* with respect to expert valuation testimony.

Related Categories: Civil-Procedure, Expert-Witness

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