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***The early bird wins the case: Get appraisers involved in litigation sooner rather than later***

Appraisers can be invaluable and essential expert witnesses, as you know. But they can help your case even more if you engage them from the beginning — as soon as deposition questioning starts. A qualified valuation expert can facilitate questioning both in deposition and at trial. Here's some advice on how to ensure you get the most out of your valuation experts.

**Choose the best**

When choosing a business valuator, you want the best, so you need to assess the expert's qualifications. Ask if he or she belongs to any business valuation professional organizations — and if so, whether he or she possesses business valuation credentials. It's also a good idea to ascertain the valuator's years of experience as well as his or her level of familiarity with the subject company's industry. Look for those who make valuation their top priority and have relevant courtroom experience. In addition, ask whether your potential appraiser specializes in a particular valuation niche. For example, someone who works primarily for non-monied spouses in divorce cases might be perceived as a hired gun.

**Ask the right questions**

Every valuation assignment is unique, but attorneys can frame deposition and trial questions around certain common denominators. Your appraiser can help you look into any potential weaknesses in the opposing expert's background and expertise, such as:

***Basic business valuation:***

The appraiser might suggest giving the opposing expert a pop quiz on valuation basics. Obviously, he or she should be able to define fair market value and know the three approaches (cost, market and income) to valuing a business. Hesitation and mistakes may indicate that the expert is unprepared or unqualified. If the mistakes are significant enough, a *Daubert* challenge may be a viable option.

***Valuation process:***

Determining whether an opposing expert followed all the routine steps required to value the business is key. For example, ask whether he or she conducted a site visit and interviewed management. If not, ask why. Some experts may sidestep these procedures to reduce expenses. In adversarial situations, experts sometimes simply assume controlling owners will deny access to the company's facilities or personnel — and, thus, fail to ask for it.

***Assumptions and limiting conditions:***



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Most appraisal reports contain an appendix that lists all of the valuator's major assumptions and limitations. Your valuation expert can help you scour this statement for any red flags, such as a scope limitation, overreliance on management-prepared spreadsheets, or the valuator's (or the valuation firm's) ongoing financial interest in the client's business. These elements may introduce an element of uncertainty in the expert's case or expose potential conflicts of interest.

### **Get a second opinion**

For more help, consider hiring a second valuation expert to act as a consultant. Your primary valuation expert can't act as an advocate for a client's financial interests. To do so would compromise his or her perceived objectivity.

But a disinterested consultant can review both experts' reports and help draft targeted deposition and trial questions. In addition, the second valuator can highlight the strengths and weaknesses in both reports. But the best part is that a consultant's work product is protected by attorney-client privilege, which means you're free to discuss and promote case strategy.

### **Catch the worm**

The more information you have — and the earlier you have it — concerning your valuation expert (and the opposing expert), the better able you'll be to craft a winning strategy. Obtaining clarification up front can help you take full advantage of your valuator's expertise — and ensure a successful outcome.

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