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LITIGATION AND VALUATION ADVISER

Helping Litigants

With a large staff dedicated solely to litigation, fraud, and valuation consulting, we deliver competent, credible service to businesses, municipalities, not-for-profits, and high net worth individuals. We are respected by both the plaintiff and defendant bar, and prosecutors at the state and federal levels.

In Valuation, Timing is Everything

The primary focus in valuation is "how much" — but "when" comes in a close second. The valuation date can have an enormous impact on value, particularly for assets such as stock, whose valuations can fluctuate dramatically, literally overnight.

Here are a few examples of situations in which the valuation date comes into play.

Estate planning

For estate tax purposes, assets are normally valued on the date of death. But under certain circumstances, an executor may elect to use the "alternate valuation date," which is six months *after* the date of death.

The later date may be advantageous if the decedent's estate includes securities, real estate or other property that's declined substantially in value since the date of death.

There's a catch, though. The executor can't selectively apply the election to assets whose values have declined sharply. Rather, if the alternate valuation date is selected, it must be used for all assets in the estate (except for those sold between the date of death and the alternate valuation date, which are valued on the sale date).

Divorce

For purposes of divorce, the valuation date is usually prescribed by state law. Typically, it's the date the divorce action was commenced, but it could also be the trial date, the date a divorce decree is issued or some other date established by law or by agreement of the parties. In some states, the court may select a valuation date that would be fair to both parties. In most cases, however, it's up to the attorney to decide which valuation date should be used.

Shareholder litigation

In shareholder oppression cases, applicable law often provides that the presumptive valuation date is immediately before the wrongful act that triggered the litigation. But it's not unusual for the parties to argue for an alternate valuation date if they feel that using the presumptive date would be unfair.

Circumstances that might call for an alternate date include:

- The unavailability of sufficient market information on the presumptive valuation date,
- The existence of a contingency or potential liability that wasn't yet resolved on the presumptive date,
- An aberration that temporarily increased or decreased the stock's value around the time of the corporation's wrongful act, or
- Evidence that the corporation's wrongful act was timed to take advantage of an historically high or low stock price.

To ensure the best possible valuation outcome, you should discuss with your valuation experts the valuation date.

In cases where the date is a litigated issue, you should be prepared to address the appropriate date and present evidence of value on various dates. h

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