

BUSINESS VALUATION UPDATE

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Rohling the Dice With a Calculation Engagement

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In a divorce case in Alabama (*Rohling v. Rohling*, 2018 Ala. Civ. App. LEXIS 94), the Court of Civil Appeals affirmed the trial court's acceptance of a calculation engagement.¹ Upon closer examination, the case does not represent a legitimate victory for calculation engagements as much as a win by forfeit. However, the case is nonetheless alarming as it represents further evidence of "calculation creep" in the business valuation field.

Facts of the case. The husband in *Rohling* owned and operated a dental lab. Although the trial court qualified him as an expert concerning the management and financial aspects of the lab, it did *not* qualify him as a valuation expert. This limitation unfortunately did not prevent the husband from serving as his own valuation expert, failing to heed Abraham Lincoln's advice that "he who represents himself has a fool for a client." In lieu of producing any type of valuation report or specific value, the extent of the husband's valuation opinion was his testimony that the dental lab was "not worth much of anything."

The wife, by contrast, hired a business appraiser who was qualified as an expert by the trial court. He prepared a calculation engagement and offered that to the trial court as evidence of the calculated value of the dental lab. Without having his own expert report, the husband's only remaining option was to attack the wife's expert's calculation engagement. The trial court

recognized and acknowledged the various shortcomings of the calculation engagement but also noted that "the fact that a more arduous or accurate method (valuation engagement) exists does not preclude the Court's consideration of the expert's findings. And the husband did not employ his own expert or pay the increased fee to the wife's expert to conduct the more rigorous valuation engagement." Given no other choice, the Court of Appeals affirmed the trial court's acceptance of the calculation engagement.

One commentator on the case wondered: "It is difficult to determine why the courts accepted the calculation of value in this case, even though it did not include the more in-depth procedures necessary to rise to the level of a valuation engagement."² I don't think this is a difficult determination at all. The court had no other option but to accept the calculation engagement since the husband did not present any reliable or qualified competing valuation opinion. The husband also did not do himself any favors by: (1) suppressing discovery during the case; and (2) after criticizing various assumptions the wife's expert made, later agreeing on cross-examination that those assumptions were in fact reasonable. The results of the husband's serving as his own valuation expert were as predictable as if I tried to fill a cavity as my own dentist.

Key takeaway. So what is the takeaway from *Rohling*? Is it a victory for calculation engagements? No. A calculation engagement did not defeat a valuation engagement here. A

1 A digest and the court's full opinion are available from BVLaw at bvresources.com/products/bvlaw.

2 schneiderdowns.com/our-thoughts-on/calculation-value-accepted-divorce-case.

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calculation engagement did not even defeat another calculation engagement. Due to the lack of any qualified opposition, the calculation engagement in *Rohling* had a bye. And byes always lose. So *Rohling* does not represent the victory of a calculation engagement over anything.

The real danger of *Rohling* is that it represents another incident of “calculation creep.” This holding could embolden other appraisers to use a calculation engagement in a litigation setting, citing its acceptance in *Rohling* as validation of its usefulness without recognizing the specific facts as to why it was accepted. This could happen despite the fact that even the founding fathers of the calculation engagement do not recommend its use for litigation purposes. For example, in “Calculations and Opinions: Bringing Clarity to a Cloudy Issue,” *Financial Valuation and Litigation Expert*, Issue 50, August/September 2014, author Jim Hitchner states:

[S]ufficiency and reliability are major factors here. *Black’s Law Dictionary*, 10th edition, 2014, defines a credible witness as “[a] witness whose testimony is believable.” In some litigation settings, an opinion is given with “reasonable certainty.” So, can a calculation and calculated value be provided that is sufficient, reliable, believable, and/or with reasonable certainty? Given the language in paragraphs 21b and 77 in [SSVS], you would think that the answer is “no.”

While Hitchner is undoubtedly correct, mere advice and suggestion from him and others to not use calculation engagements in a litigation context is unfortunately an ineffective and inadequate firewall. Instead of gentle dissuasion from various individuals, the governing bodies in business valuation need to draft clear and unambiguous language in their standards that states that calculation engagements are never appropriate for litigation, IRS purposes, ESOPs, or any other context where a reliable opinion of value is needed or third-party reliance is present.

As more calculation engagements leak into litigation and court opinions, their acceptance will become more prevalent and the race to the bottom will be on. As noted in my prior *Business Valuation Update* articles,³ the incomplete and potentially biased aspects of calculation engagements represent a dumbing down of the valuation process and profession and a violation of

the duty business appraisers owe to the public. With cases such as *Rohling*, the camel's nose is already under the tent and it will be difficult if not impossible to keep the rest of it from coming in unless clear prohibitions against the use of calculation engagements in certain contexts are established. ♦

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3 "‘Breaking Bad’ in the Business Valuation Profession," *Business Valuation Update*, July 2018, and "Calculation Engagements: Still Broken, Still Bad," *Business Valuation Update*, February 2019.

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