Valuation Critique? Preparing a Rebuttal Report

By: Michael Costello

Valuation practitioners usually prepare standard valuation reports for clients. They can also refute reports to convey expert opinions in legal matters. Rebuttal reports are a special subset of valuation reports that valuation experts prepare exclusively for litigation purposes. Typically, they provide either a critique of another expert’s valuation report or a response to the opposition’s criticisms.

With little published guidance on this type of report, many clients don’t know what to expect from their experts’ rebuttal reports. Let’s take a closer look at these reports, what they consist of and how experts use them to convey valuation opinions for litigation purposes.

Prepare a Written Report?

If you’ve seen one valuation report, you’ve pretty much seen them all. As long as you hire a competent, thorough professional to value your business, a well-written valuation report typically contains a table of contents, a detailed explanation of the valuation analyses, a statement of assumptions and limiting conditions and a list of the sources the business appraiser used. When it comes to rebuttal reports, however, things are less straightforward.

Although they’re not quite a free-for-all, rebuttal reports can take a variety of forms. Some expert witnesses prefer to offer their rebuttal testimony orally, leaving the attorney responsible for asking sufficiently salient questions during direct examination. Oral rebuttals are especially risky in jury trials if the judge isn’t financially savvy or when the lawyer hasn’t mastered the technical aspects of business valuation.

Common written formats of rebuttal reports include lengthy formal reports, brief letters, bulleted lists and demonstrative exhibits. The appropriate format depends on the parties’ preferences, the time and money available, the case’s complexity, relevant civil procedure and the expert’s professional standards. A well-written rebuttal report backs up its claims with authoritative references from company information, case law, professional journal articles or financial texts.

A rebuttal report critiquing the opposition’s valuation usually points out factual and procedural errors; it may also quantify the individual and collective effects of these errors. When preparing a critique of an opposing expert’s report, an unbiased expert lists all errors uncovered—not just those that support the client’s point of view. Although it may work against you to highlight errors that contradict your side’s argument, if a rebuttal report can show the opposing expert made significant errors, the judge may question that witness’s reliability and competence.

Alternatively, your expert may refute the other side’s criticisms of your argument, respond to the other side’s contentions, provide additional support for his or her opinion and clarify any unclear sections of the original report. But if the opposition finds a legitimate error, the valuation expert’s best bet is to
admit the error and quantify its effect on the company’s value. Although a pronounced number of mistakes can discredit an expert witness, most judges understand that business appraisers are human and do occasionally make mistakes.

**What are the Professional Standards?**

For some limited guidance on rebuttal report formats, valuation experts’ can turn to civil procedures. But standards are disappointingly lax in this area. In general, professional standards affecting business appraisers can be broken down into three categories: ethical, developmental and reporting.

A review of the American Institute of Certified Public Accountants (AICPA), National Association of Certified Valuation Analysts (NACVA), the Institute of Business Appraisers (IBA) and American Society of Appraisers (ASA) standards clearly indicates that valuation professionals cannot deviate from their ethical or developmental standards. For example, when preparing a rebuttal, appraisers cannot suddenly act as client advocates (an ethical standard violation) or skip steps in their analyses (a developmental standard violation).

Nevertheless, the reporting standards for rebuttal reports are ambiguous at best.

**What are the “Official Rules”?**

Many rebuttal report factors are case-specific and subjective. But civil procedures and professional standards do provide valuation experts with official sources of guidance. If a case is being tried in a federal court, for instance, the relevant rules of civil procedure are fairly formal and instructive.

According to Federal Rule 26, expert reports must be in writing and signed, and provide considerable detail as to the expert’s opinions, reasoning and sources used.

If the state’s civil procedures apply, though, the situation becomes muddier. The attorney should research the state’s procedural rules regarding expert reports and expert witness opinions. Although some states have adopted a close facsimile of the federal rules, others have no formal reporting or prior disclosure requirements.

**Local Case Study**

In a recent case, we critiqued a valuation report written by a Certified Valuation Analyst. The case involved a breach of contract and determination of damages based upon a valuation of an insurance agent’s “book of business.”

We pointed out several errors in the report, including an incorrect inflation rate, inaccurate use of terminology, but most importantly, the failure of the opposing expert to consider the costs of producing the revenue stream under consideration.

The agent was attempting to buy his “book of business,” and as a result, he testified that he was planning to borrow funds to acquire a block of customer accounts. In addition, the valuation expert did not include the cost of customer service representative assistance, errors and omissions insurance
coverage or office costs.

After we presented our calculations, it was evident that the damages claimed were greatly in excess of what would be considered reasonable.

**We Can Help**

Effective communication of professional valuation opinions in legal matters may require use of many different strategies. A well-written rebuttal report can be key in supporting litigation. If you need assistance preparing rebuttal testimony for a valuation case, we can help. Please call Michael Costello with your questions about these specialized reports or contact your Elliott Davis Decosimo advisor.

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