Litigation Support Services

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VALUATION ADVISORS AND INVESTMENT BANKERS
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Litigation Support Services

Howard Frazier Barker Elliott, Inc. (“HFBE”) is an independent valuation and financial advisory firm that has built a large regional practice in the “sunbelt states” since its formation in 1991. The principals of our firm have been in the business of providing opinions regarding the value of businesses and the securities they issue for over twenty five years. All of our principals also have extensive investment banking backgrounds with major regional investment banking firms in Texas.

Business Valuation

This is the core business line for our firm and we are highly skilled in this area. We perform valuations on a continual basis for fairness opinions, tax matters, ESOPs and many other kinds of business transactions. This expertise in valuation theory and its practical application provides a solid foundation for our opinions when used in a litigation context. The manner in which we express these opinions, whether on paper or in person, is powerful and persuasive. We have significant experience in testifying in court and in other forums for adversarial proceedings.

Securities Valuation

HFBE’s valuation services include valuing fractional interests in corporations and partnerships. Frequently such assignments call for the determination of a value which is at a discount to the pro-rata value of the enterprise as a whole. These discounts may be associated with minority interest or lack of marketability issues. Besides common equity interests, we frequently perform assignments for preferred stock, options, warrants, notes and other forms of debt instruments. In addition, we are also asked to determine the value of securities issued by public companies but which are restricted from trading (restricted stock). Similarly, we also value publicly-traded common stock wherein the block size held is so large as to not be immediately marketable (blockage).

Securities Industry Issues

As HFBE Capital, LP is a registered broker/dealer with the NASD, the principals of HFBE hold Series 24 (Principal), Series 7 (General Securities) and Series 63 (State Licensing) licenses. Prior to the founding of HFBE, its principals worked for many years in the corporate finance departments of major regional investment banking firms headquartered in Texas. We are, therefore, familiar with most aspects of securities underwriting and issuance, due diligence standards, supervisory issues and customary compensation agreements.

Estate and Gift Tax Litigation

As the major portion of our valuation business is tax-driven, it is only natural that we should be actively involved in providing litigation assistance in regard to estate and gift tax cases. As can be seen by reviewing the “Expert Witness Testimony” section of this brochure, a meaningful segment of our litigation practice has been focused on this area.

Fairness Opinions and Dissenter’s Rights

The professionals at HFBE have been providing valuation and fairness opinions for over 25 years to Boards of Directors, investors, trustees and other corporate entities in a wide range of industries. In this regard, HFBE has expertise in valuing complex transactions, distressed companies and intangible assets such as contracts, licensing agreements and technology. Our experience in this regard includes assignments wherein we are providing a fairness opinion or assignments in which values are in dispute as the result of a Dissenter’s Rights action under applicable state law.

With the significant additional costs of remaining a publicly-traded company in light of the Sarbanes-Oxley Act, it is expected that many small capitalization public companies will either sell or merge their business or go private. Our recent experience confirms that the SEC continues to closely review such transactions regardless of size, especially pertaining to valuation, and an experienced financial advisor is critical for these transactions. A list of our fairness opinion transactions is attached.

Intangible Assets and Intellectual Property

The strategy behind every acquisition or product development is value creation. Management's objectives are to create and maintain a business which is both growing and achieving profitability at rates in excess of the competition. The ability to attain these goals is usually based on proprietary technology, know-how or information. These proprietary characteristics that create a competitive edge for the company are Intangible Assets. In some cases the intangible asset is manifested in an identifiable Intellectual Property such as a patent or copyright. A company might also hold valuable licenses, contracts, non-compete agreements or franchises. In other instances, the competitive edge is found in less obvious attributes such as trade secrets, a unique workforce, or a loyal customer base.

HFBE has completed numerous engagements involving the value of Intellectual Property. These engagements were performed for a number of different reasons, including:

1. SEC-mandated GAAP accounting purposes (FAS 141 and FAS 142)
2. Federal Income, Estate and Gift Tax issues
3. Damages for litigation purposes
4. Sale of an intangible asset such as a royalty or license
5. Setting an appropriate royalty rate for an intangible asset

A list of Intellectual Property assignments is attached.

For an illustration of the types of Litigation Services we offer, please review the Recent Business Litigation Testimony section of this presentation.

Fairness Opinions
and
Intellectual Property Assignments

FAIRNESS OPINIONS

Company	Industry	Date
ClubCorp, Inc.	Leisure services	2006
Symtx Inc.	Electrical testing	2006
American Medical Technologies	Dental products	2006
United Heritage Resources	Exploration and production	2006
Geokinetics, Inc.	Oilfield services	2006
GenBand Inc.	Manufacturing of VoIP equipment	2006
DiCon Fiberoptics	Manufacturing of optical components	2006
Petroleum Oil & Gas Espana, S.A.	Exploration and production	2006
McCarty-Hull, Inc.	Tobacco distributor	2006
Cardwell Foundation	Truck stops, wholesale and retail gasoline	2006
Cubic Energy	Exploration and production	2006
Texas HealthSpring, LLC	Healthcare - Medicare HMO	2006
Boots & Coots International Well Control	Oilfield services	2005
Trajen Holdings, Inc.	Aviation services	2005
APG Holdings, Inc.	Distributor of industrial supplies	2005
TeleTouch Communications, Inc.	Wireless messaging and related network management	2005
Crown Resources	Mining	2005
Global Energy Group	New technology for HVAC	2005
Geokinetics, Inc.	Oilfield services	2004
PULSE EFT Association	Financial services	2004
FirstCity Financial Corp.	Sub-prime auto lending	2004
Blue Dolphin Energy	Oil and gas pipelines	2004
Aquilex Services Corp.	Power generation equipment and services	2004
Enlink Geoenergy Services, Inc.	Geothermal HVAC systems	2004
Exopack Holding Corp.	Flexible packaging (manufacture and sale)	2003
EpicEdge, Inc.	Enterprise software consulting	2003
Olympic Resources, Ltd.	Exploration & production	2003
Genesis Energy, L.P.	Oil and gas pipelines	2003
Seven J Stock Farms	Agriculture and real estate holdings	2003
Weingarten Realty Investors	Real estate	2003
Geokinetics, Inc.	Oilfield services	2003
Boots & Coots International Well Control	Oilfield services	2003
Analytical Surveys, Inc.	Geographic surveys	2003
Hostcentric, Inc.	Web hosting	2003
Black Stone Minerals Company and Black Stone	Exploration & production; midstream; mineral assets	2003
Castle Dental Centers, Inc.	Dental practice management	2002
Highland Threads, Inc.	Manufacturing - industrial fasteners	2002
Black Stone Minerals Company and Black Stone	Exploration & production; midstream; mineral assets	2001
NAB Asset Corporation	Residential mortgage banker	2001
Texas Petrochemical Holdings, Inc.	Petrochemical	2001
Exopack Holding Corp.	Flexible Packaging (manufacture and sale)	2001
Q Services, Inc.	Oilfield Service	2001
Carlberg & Associates, Inc. (d/b/a Rives Carlberg)	Advertising	2000
AXIA Incorporated	Manufacturing and Distribution	2000
MediQuick Services, Inc.	Healthcare (drug delivery service)	2000
Media News Group, Inc.	Media (newspapers)	2000
St. Lauren Investments Corporation	Real Estate	2000
Synagro Technologies, Inc.	Waste Management	2000

Intellectual Property Assignments

Certified Financial Planner Board of Standards, Inc.
Determine fair market value of intangible assets, including certification and service marks used internationally
Purpose: Sale of CFP international operations

Pharmaceutical Partners
Determine fair market value of royalties
Purpose: Income Tax planning of limited partner investors

E-wings
Value of licensing rights of intellectual property of early stage telecommunications company
Purpose: International tax planning

Global Evangelism Television, Inc.
Determine appropriate royalty rate to author for publications sold through this entity

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Voest Alpine
Intangible asset value of sales force and trading network
Purpose: International tax planning

Pelton Company, Inc.
Intangible asset value, including patented products, associated with the Company.
Purpose: GAAP accounting for acquisition

OYO-Geophysical
Set royalty rate on future product sales and determine value in the sale of this company
Purpose: Values used in terms of pending acquisition

Prodigene,Inc.
Valuation of this bio-farming company which owns only intellectual property
Purpose: Set price for round of venture financing

Gyrodata, Inc.
Value of patent and proprietary data
Purpose: Litigation

Subsurface Computing, Inc.
Value of software, trademark and licensing rights
Purpose: Due Diligence analysis for acquisition

AXIS Geophysical
Value of software, trademark and licensing rights for geophysical intellectual property
Purpose: GAAP accounting for acquisition (SFAS 141)

Castle Dental
Value of goodwill, including brand and trademark
Purpose: GAAP accounting for acquisition (SFAS 142)

Resumes

WILLIAM H. FRAZIER, ASA
Howard Frazier Barker Elliott, Inc.
1601 Elm Street, Suite 4340
Dallas, Texas 75201

SUMMARY: Since 1975, involved principally in general investment banking activities with two regional firms headquartered in Houston, Texas. Activities included, in order of concentration of effort, are: (1) the valuation of closely-held entities and (2) advisory opinions to boards of directors, (3) the sale, merger or acquisition of corporations to other corporations or entities, (4) venture capital financing, (5) the securing of long-term capital for corporations through the public offering of common stock or bonds and (6) the private placement of securities to institutional buyers.

EXPERIENCE:

1991 to present — Howard Frazier Barker Elliott, Inc.
Dallas, Texas

Position: Senior Managing Director/Owner

Duties: Management supervision and participation in valuation, financial advisory opinions, and corporate finance.

7/90 to 1991 — Kemper Securities Group, Inc. (formerly Lovett Underwood Neuhaus & Webb, Inc.)
Houston, Texas

Position: Managing Director
Corporate Finance Department

Duties: Valuations and financial advisory opinions.

1/90 to 7/90 — J. B. Poindexter & Co.
Houston, Texas

Position: Principal

Duties: Locating, screening, analyzing and evaluating leveraged buyout acquisition candidates.

8/81 to 12/89 — Lovett Mitchell Webb & Garrison, Inc.
Houston, Texas

Position: Senior Vice President - Corporate Finance Department

Duties: Specialized in valuation and financial advisory opinions. Also involved in long-term capital financing, valuation of securities, merger/acquisitions, venture capital financing, investment banking/syndicate relationship management with other investment banking firms and sales of securities to investors.

8/75 to 8/81	Underwood, Neuhaus & Co., Incorporated Houston, Texas
	Position: Corporate Finance Department (Vice President since 1979)
	Duties: General corporate finance activities
10/76 to 3/77	Institute for International Studies and Training Fujinomiya, Japan
	Position: Instructor
	Duties: Taught the American business system and business communication to Japanese businessmen. Established business relationships for private placement and merger/acquisition activities at Underwood, Neuhaus & Co., Inc.

EDUCATION:

Dec. 1974	American Graduate School of International Management Glendale, Arizona
	Master of International Management
May 1973	Spring Hill College Mobile, Alabama
	Bachelor of Science in Commerce, Cum Laude Presidential Scholar

PROFESSIONAL AFFILIATIONS

American Society of Appraisers (ASA), Senior Member
Business Valuation Committee of the ASA

LICENSES

NASD Series 7 General Securities Representative
NASD Series 63 Uniform Securities Agent State Law Exam
NASD Series 24 General Securities Principal

William H. Frazier, ASA

Published Articles

Nonmarketable Investment Company Evaluation (NICE). Valuation Strategies Vol. 8., No. 3. (November/December 2006).

"Pure Blockage" Working Paper, 1996. Condensation of this paper published in: Blockage Discounts, The Handbook of Advanced Business Valuation The McGraw Hill Companies, Inc. (2000).

Quantitative Analysis of the Fair Market value of an Interest in a Family Limited Partnership. Valuation Strategies Vol. 8., No. 3. (January/February 2005).

It's Turtles All the Way Down. Paper and Presentation to Twenty Third Annual Advanced Business Valuation Conference of the American Society of Appraisers. October, 2004.

The Valuation of Family Limited Partnerships, The Handbook of Business Valuation and Intellectual Property Analysis, McGraw Hill Companies, Inc. 2004.

The Effective Use of Appraisers in Estate Planning and Estate and Gift Tax Litigation, Thirty-Third Annual Philip E. Heckerling Institute of Estate Planning, University of Miami School of Law, 1999.

The Battle Joined: The U.S. Tax Court Grapples with the Built-in Capital Gains Tax, The Journal of Business Valuation, The Canadian Institute of Chartered Business Valuators, 1999.

Indemnification for Business Appraisers, Valuation, Vol. 41, No. 4, (June 1997), American Society of Appraisers.

How Corporate-Level Capital Gains Taxes Affect Fair Market Value, Estate Planning, Volume 23, No. 5 (June 1996).

Will Proposed Rule 144A and Revisions to Rule 144 Affect Lack of Marketability Discounts, Business Valuation Review, Vol. 8, No. 4, (December 1989).

The Role of the Investment Advisor in the Selling of a Company, Considerations in Buying or Selling a Business in Texas, National Education Association, 1986.

William H. Frazier, ASA

Presentations

“Topics from a National Program Perspective” – The Second Annual National IRS Symposium on Valuation Issues, Cerritos, CA, February 8, 2007

“Practical Insights on Establishing and Defending Valuations” – 55th Tulane Tax Institute, New Orleans, LA, October 27, 2006.

“Interaction of the Attorney with the Valuation Expert” – 36th Annual Estate Planning Seminar, Louisiana State University School of Law, Baton Rouge, LA, October 20, 2006.

“CHEVI Closely Held Equity Value Interpolation” – 12th Annual Advanced Estate Planning Strategies Course, Santa Fe, NM, April 7, 2006.

“The Asset Approach and Built-In Gains” – AICPA/ASA National Business Valuation Conference, Las Vegas, NV, November 16, 2005.

“Drafting and Planning for Family Business Entities in Light of Current Developments” – Advanced Drafting: Estate Planning & Probate Course, State Bar of Texas, Austin, TX, November 1, 2002.

“The Deal” – Merger & Acquisition Valuation Presentation at Advanced Business Valuation Conference of the American Society of Appraisers; Seattle, WA, October 26, 2001 and Valuation 2000; Las Vegas, NV, July 12, 2000.

“Built-in Capital Gains Taxes in C-Corps” – Joint Business Valuation Conference of the Canadian Institute of Chartered Business Valuation and the American Society of Appraisers, Montreal, Quebec, Canada; September 25, 1998.

ALEX W. HOWARD, CFA, ASA
Howard Frazier Barker Elliott, Inc.
815 Walker, Suite 1140
Houston, Texas 77002

SUMMARY: Since 1972, has prepared or supervised numerous studies encompassing diverse industries for both private and public companies. These studies related to industrial, retail, wholesale, service, insurance and investment companies, natural resource and real estate operations, and banks. These studies were performed for purposes including corporate and estate planning; estate, gift, and income tax requirements; going-private situations; mergers and acquisitions; determination of the appropriate basis of exchange for mergers, advising and negotiating the sales, or purchases of companies; reorganizations and recapitalizations; employee stock ownership plans, and private placements. Participated in numerous other types of analytical and statistical assignments, including studies of market pressure, restricted securities, and cost of flotation.

EXPERIENCE:

1991 to Present — Howard Frazier Barker Elliott, Inc.
Houston, Texas

Position: Senior Managing Director/Owner

Duties: Management, supervision and participation in valuations and financial advisory opinions. Related activities include merger and acquisition advisory services.

1988 to 1991 — Kemper Securities Group, Inc. (formerly Lovett Underwood Neuhaus & Webb, Inc.)
Houston, Texas

Position: Managing Director
Corporate Finance Department

Duties: Valuations and financial advisory opinions.

1985 to 1988 — First Interstate Capital Company of Texas
Houston, Texas

Position: Vice President

Duties: Valuations and financial advisory opinions.

1981 to 1985 — Rotan Mosle, Inc.
Houston, Texas

Position: First Vice President

Duties: Valuations and financial advisory opinions. Involved in related corporate finance activities including mergers and acquisitions and private placements.

1972 to 1981 — Standard Research Consultants
New York, New York

Position: Vice President

Duties: Valuations and financial advisory opinions.

Under contract to the Pension Benefit Guaranty Corporation, rendered financial advisory opinions relating to the statutory liability of employers under Title IV of ERISA. Served on an appraisal panel under Oregon's Dissenting Shareholder Rights Statute.

Speaker at a variety of seminars involving business owners, attorneys, corporate executives, bankers, and accountants. Published articles on valuation, recapitalization, and mergers and acquisitions in several periodicals, including Prentice-Hall's "Tax Forms Service," Mergers and Acquisitions, and Management Research. Contributing author to Financial Valuation: Business and Business Interests.

EDUCATION:

June 1975	New York University New York, New York Master of Business Administration (Major: Economics)
June 1970	New York University New York, New York Bachelor of Science (Major: Finance)

PROFESSIONAL AFFILIATIONS:

July 1991	American Society of Appraisers (ASA), Accredited Senior Appraiser
September 1979	Association for Investment Management and Research Chartered Financial Analyst (CFA)
March 1981	The Houston Society of Financial Analysts

Alex W. Howard, CFA, ASA

Published Articles

The Valuation of Family Limited Partnerships, The Handbook of Business Valuation and Intellectual Property Analysis, The McGraw Hill Companies, Inc. (2004).

Natural Resources, Financial Valuation: Business and Business Interests, Rosenfeld Launer Publications, (1990).

What is Your Company Really Worth?, New England Printer & Publisher, (October 1980).

What is a Distributor Firm Worth?, Maintenance Supplies, (October 1980).

Assessing the Value of Privately-Held Firms, Iron Age, (September 1980).

Contingent Earnouts Why, How and When?, Management Research: Vol.11/No.6, (Nov/Dec 1978). Co-author: A. Rosenbloom

Any Best Valuation Method In Buy-Out Agreements, Prentice-Hall, (1977).

“Bootstrap” Acquisitions and How to Value Them, The Journal of Corporate Ventures: Vol. 11/No. 4, (Winter 1977). Co-author: A. Rosenbloom.

Estate Planning Via Recapitalization of Closely-held Corporations, The Journal of Corporate Venture: Vol. 11/No. 3, (Fall 1976).

DONALD W. BARKER, CFA, ASA
Howard Frazier Barker Elliott, Inc.
815 Walker, Suite 1140
Houston, TX 77002

SUMMARY: Since 1978 participated in a variety of corporate finance activities, principally with three regional investment banking firms headquartered in Houston, Texas. Primary emphasis in valuation of corporate securities and partnership interests of private and closely-held companies as well as publicly-traded corporations. Financial advisory opinions given for purposes of corporate mergers, acquisitions and spin-offs, reorganizations and recapitalizations, estate, gift and income tax requirements, estate planning, buy/sell agreements, employee stock ownership plans, and other special reasons. Subject companies represented a diverse spectrum of industries including commercial banking, mortgage banking, printing and publishing, retailing, equipment manufacturing, oil and gas drilling and servicing, broadcasting, insurance, and real estate.

EXPERIENCE:

1991 to present — Howard Frazier Barker Elliott, Inc.
Houston, Texas

Position: Senior Managing Director/Owner

Duties: Management supervision and participation in valuations and financial advisory opinions.

1988 to 1991 — Kemper Securities Group, Inc.
Houston, Texas

Position: Managing Director
Corporate Valuation Department

Duties: Preparation of valuations and financial advisory opinions.

1982 to 1988 — Underwood, Neuhaus & Co. Incorporated
Houston, Texas

Position: Vice President

Duties: Provided valuations of private and closely-held companies and partnerships as well as securities of publicly-held corporations for purposes such as acquisitions, corporate re-organizations, recapitalizations, estate and gift tax planning, buy/sell agreements, employee stock ownership plans, and other special reasons.

1978 to 1982	Rotan Mosle, Inc. Houston, Texas	
	Position:	Assistant Vice President
	Duties:	Participated in a variety of corporate finance activities such as public securities underwriting and company acquisitions. Performed valuations of private and closely-held companies for acquisitions, reorganizations, recapitalizations, estate and gift tax planning, employee stock ownership plans, and buy/sell agreements.
1973 to 1978	American National Bank Austin, Texas	
	Position:	Securities Analyst
	Duties:	Securities analysis and investment advisor to portfolio manager, member of Trust Investments Committee.
1971 to 1973	Federal Reserve Bank of Dallas Dallas, Texas	
	Position:	Economist
	Duties:	Economic Research Department Economist involved in regional economic analysis, banking industry structure analysis, and bank holding company acquisition evaluation.

Speaker at numerous seminars for attorneys and accounts on business valuation issues.

EDUCATION:

1973 - 1978	University of Texas Austin, Texas Graduate course work and qualifying examinations for Ph.D. in Finance and Economics
1971	University of Oklahoma Norman, Oklahoma Master of Arts in Economics and Statistics
1969	Austin College Sherman, Texas Bachelor of Arts in Business and Economics

PROFESSIONAL AFFILIATIONS

American Society of Appraisers
Accredited Senior Appraiser (ASA)

CFA Institute
Chartered Financial Analyst (CFA)

Houston Society of Financial Analysts

Past Chairman and Current Member of the Valuation Advisory Committee, National ESOP Association

Charter Member of Southwest Chapter of National ESOP Association

LARRIE A. WEIL, CFA
Howard Frazier Barker Elliott, Inc.
1601 Elm Street, Suite 4340
Dallas, TX 75201

<u>SUMMARY</u>: Larrie has been a senior executive and new business producer in major regional investment banking firms for 35 years. He has advised corporate finance clients in a variety of industries and has successfully completed a wide range of capital market transactions, including: initial public offerings; public secondary, follow-on, debt and convertible securities offerings; private capital raising; and mergers and acquisitions. In addition, Larrie has served as a director on the boards of public and private companies, as well as on securities industry committees.

<u>EXPERIENCE</u>:

2003 to present — Howard Frazier Barker Elliott, Inc.
Dallas, Texas

Position: Senior Managing Director

Duties: Financial Advisory Services, including merger and acquisition, fairness opinions, private capital raising and valuation services.

1991 to 2002 — Southwest Securities, Inc. (Includes Barre & Company, which merged into Southwest)
Dallas, Texas

Position: Executive Vice President, Head of Investment Banking

Duties: Led 15 professionals providing corporate finance advice to middle market public and private companies across the country. We managed and co-managed initial public offerings, follow on equity and debt offerings, executed private placements and provided a full range of merger and acquisition advisory services, including fairness opinions.

1985 to 1991 — Underwood, Neuhaus & Co., Inc. (Includes successor company, 909 Corp.)
Houston, Texas

Position: Executive Vice President & Chief Operating Officer; President

Duties: As President of 909 Corp., managed complex litigation and oversaw liquidation of corporate shell. As COO, jointly managed entire company, along with the CEO, with particular emphasis on equity capital markets, corporate finance, administrative and operations.

1981 to 1985 — Eppler, Guerin, & Turner, Inc.
Dallas, Texas

Position: Senior Vice President, Member Management Committee

Duties: Manager of Corporate Syndicate Department, member of senior management committee of the firm.

1980 to 1981	Boettcher & Company Denver, Colorado	
	Position:	Special Limited Partner
	Duties:	Manager of Corporate Syndicate Department & Listed Securities
1974 to 1980	Stern Brothers & Co. Kansas City, Missouri	
	Position:	Vice President
	Duties:	Head of Capital Markets
1968 to 1973	Kohlmeyer & Co. New Orleans, Louisiana	
	Position:	General Partner
	Duties:	Manager of Corporate Syndicate Department

EDUCATION:

University of California, Berkeley
Berkeley, California
Graduate Studies (Latin & Roman History)

1967 University of California, Berkeley
Berkeley, California
Bachelor of Arts (History & Latin)

PROFESSIONAL AFFILIATIONS:

Chartered Financial Analyst
NASD Security Licenses – Series 7, 63, 24
Member- CFA Institute
Dallas Society of Financial Analysts
Former Member- Capital Markets Committee, Securities Industry Association
Former Member- National Association of Securities Dealers, Texas Business Conduct Committee
Former Member- Syndicate Committee, Securities Industry Association
Former Allied member- New York Stock Exchange

Expert Witness Testimony

William H. Frazier, ASA
<u>Expert Witness Testimony</u>

<u>United States Tax Court</u>

Estate of Frazier Jelke v. Commissioner of Internal Revenue T.C. Memo. 2005-131.

McCord v. Comissioner, 120 T.C. 358 (2003)

McCord v. Commissioner, No. 03-60700 (5th Cir., August 22, 2006)

Estate of Gladys Cook v. Commissioner, T.C. 170 (2001)

Estate of Gladys Cook v. Commissioner No. 02-61011 (5th Cir. November 13, 2003)

Estate of Beatrice Dunn v. Commissioner T.C. 12 (2000)

Estate of Beatrice Dunn v. Commissioner No. 00-60614 (5th Cir. August 1, 2002)

Estate of Frank M. DiSanto v. Commissioner T.C. Memo. 1999-421

Estate of James Scribner v. Commissioner

Trial held before Judge Colvin in Jackson, Mississippi in January, 1998
Case settled post-trial

Estate of Corbin Robertson v. Commissioner Internal Revenue

Trial held before Judge Gale in Houston, Texas in November, 1996
Case settled post-trial

<u>United States Court of Federal Claims</u>

Estate of Floyd Jone v. United States of America

Estate tax dispute settled before trial in 2006

<u>District Court of Nacogdoches County – 145th Judicial District</u>

In re: Estate of Sam B. Hayter Trust, Docket No. C21.209 (2005)

United States District Court - Western District of Texas, San Antonio Division

Spectrum Creations, L.P. v. Carolyn Kinder International, L.L.C. and the Uttermost Company

Case No. SA-05-CA-0750-XR (2006)

NYSE Arbitration No. 2000-008556

Francisco Julio Lerma Sanchez, et al v. Paine Webber, Inc., Enrique Ernesto Perusquia and Lehman Brothers, Inc.

Value of shares of NASDAQ "pink sheet" and Vancouver Exchange stocks. Opinion on professional and ethical conduct. June, 2001

United States District Court for the Middle District of Tennessee, Nashville Division

Comalloy International Corporation, a Delaware Corporation and Exxon Corporation, a New Jersey Corporation, Plaintiffs/Counterdefendants v. Paul J. Fenelon and Ronald M. Sohr, Defendants/Counterplaintiffs

Civil Action No.: 3-93-0087

Judge Trager, Magistrate Brown, Jury Demand

Jury trial held in Nashville, Tennessee in February and March 2001

United States District Court - Northern District of Texas, Fort Worth Division

Van Kampen Merritt, Inc. v. Trinity Meadows Raceway, Inc.

Case No. 4-93CV-068 Y

United States Bankruptcy Court for the Northern District of Texas - Dallas Division

Grady Henry Vaughn, III, Debtor - Case No. 393-36940-HCA-11

Value of equity securities of Chama Land & Cattle Company

District Court, City and County of Denver – State of Colorado

Preston, Reynolds & Co., Inc. v.. The John R. Behrmann Revocable Trust

Case No. 00 CV 5704

Fair value of shares under Colorado's Dissenter's Rights Act

151st Judicial District Court of Harris County, Texas

One Call Systems, Inc. v. Houston Lighting & Power Co., et al.

Damage calculation from loss of business

127th Judicial District Court of Harris County, TX - No. 2000-40391

Gyrodata Incorporated v. Baker Hughes Incorporated and Baker Hughes Inteq

Fair market value of technology of the plaintiff. November, 2001

127th Judicial District Court of Harris County, TX - No. 88-59267

Texas Oil Company, Inc. v. Tenneco, Inc., Morgan Stanley & Co., Inc. and Seagull Energy Corp.

Fair market value of Houston Oil & Minerals Co. when acquired by Seagull Energy Corp.

United States District Court for the Southern District of Texas - Houston Division

Jay H. Golding and Patrick Bromley v. Falcon-Seaboard Oil Company

(1) Determination of fair market value of company, (2) determination of fairness of value and amount of warrants received as compensation for financial risk and (3) industry standards of conduct for investment banker acting as agent in arranging debt financing.

Sioux Ltd. (Subsidiary of Rapada Corporation) Securities Litigation Civil Action No. MDL-592

Fair market value of preferred stock

80th District Court of Harris County, Texas

Van C. DeWitt v. Energy Service Co., Inc., et al

Determination of reasonable allocation of incentive equity to management of a new venture

United States Federal Bankruptcy Court for the Southern District of Texas - Houston Division

Voss 10, Ltd., A Texas Limited Partnership, Debtor, First RepublicBank Dallas, N.A., v. Voss 10, Ltd., A Texas Limited Partnership

Reasonableness of Plan of Reorganization submitted by debtor

Probate Court No. 3 of Dallas County, Texas

R. Clay Underwood and River Oaks Trust Company, Co-Administrators of the Estate of Dorothy J. Warren v. Quest Microwave Companies, Harold J. Erbs, et al.

Fair market value of long distance microwave telecommunications company

<u>**342nd Judicial District Court of Tarrant County, Texas**</u>

Fossett Corporation v. Marvin Gearhart, et al.

Review of price and terms of merger of public company in shareholders' suit

<u>**District Court of Harris County, Texas - 113th Judicial District**</u>

Harold A. Odom, Jr. v. General Homes Consolidated Companies, Inc., et al.

Fair market value of restricted securities

<u>**United States District Court for the Northern District of Texas - Dallas Division**</u>

Engra, Inc. v. Morris T. Gabel, et al.

Damage determination relating to fair market value of an enterprise

<u>**United States Federal Bankruptcy Court**</u>

Freedom-America's Store, Inc. f/k/a/ Gibson Products Co., Inc. of Baytown, Official Unsecured Creditors Committee v. Beth Howard, et al.

Determination of solvency of borrower at the date of a loan later going into default

<u>**United States Federal District Court**</u>

Centel Communications Company, Inc. et al (Fisk Telephone) v. Commissioner of Internal Revenue

Fair market value of warrants

<u>**Various State and Federal Courts**</u>

Chinook Company v. Nucorp Energy, Inc.

Fair market value of an enterprise

<u>**District Court of Harris County, Texas - 246th Judicial District**</u>

Patsy C. Rogers v. Jack D. Rogers

Fair market value of various enterprises for purposes of marital dissolution

District Court of Harris County, Texas - 270th Judicial District

Interfirst Bank Houston, N.A. v. Houston Technical Consulting Group, Inc.

Determination of economic viability of an enterprise at the date of foreclosure for lender liability purposes

District Court of Harris County, Texas - 26th Judicial District

Shirley J. Shipley v. Lawrence W. Shipley, Jr.

Fair market value of an enterprise for purposes of marital dissolution

District Court of Harris County, Texas - 11th Judicial District

Ronald E. Lee, Jr., et al v. Sutherland Properties, Inc.

Fair value of shares to be repurchased in an appraisal proceeding pursuant to the Texas Business Corporation Act

District Court of Harris County, Texas - 308th Judicial District

Marilyn Joy Kurio v. Arthur Lee Kurio

Fair market value of an enterprise for purposes of marital dissolution

High Court of Justice (Great Britain) - Chancery Division

James Cayne, Munro Bank v. Global Natural Resources, PLC

Fairness to the shareholders of merger of a corporation into Global Natural Resources

United States District Court for the Southern District of Ohio

Marvin L. Warner v. Global Natural Resources, PLC

Fairness to the shareholders of merger of a corporation into Global Natural Resources

Arbitration

Texas Meridian Resources

Value of Class C Convertible Preferred Interest in publicly-traded master limited partnerships

Alex W. Howard, CFA, ASA
<u>Expert Witness Testimony</u>

<u>U. S. District Court, District of Texas</u>

K3C, Inc., and Sierra Industries, Inc. Plaintiffs, V. Bank of America, N.A., Defendant and Counter-Plaintiff, V. K3C, Inc., Sierra Industries, Inc., and Mark Huffstutler Counter-Defendants

Civil Action No. SA 03CA0557

Opined regarding the interest rate environment and adequacy of disclosure regarding a "Knockout Swap" transaction.

<u>U.S. Tax Court</u>

Estate of Esther B. Bassler, Deceased, Patricia S. Houtz and National City Trust Company, Co-Personal Representatives, Petitioner, v. Commissioner of Internal Revenue Service

Docket No. 3532-02

Respondent; in the United States Tax Court. Valuation of a limited partnership interest in a family limited partnership.

<u>District Court of Harris County, Texas - 295th Judicial District</u>

Petris Technology, Inc. v. Science Applications International Corporation and Halliburton Company

Valuation of an e-commerce business serving the oil and gas acquisition and divestiture market.

<u>U.S. Tax Court</u>

Estate of Oliver W. Schneider, Jr., Deceased, Oliver W. Schneider III, and Tracy L. Morris, Executors, v. Commissioner of Internal Revenue

Docket No. 2362-01

Issue was the valuation if a minority and noncontrolling block of stock of a diversified manufacturing and distribution company primarily engaged in the manufacturing of component parts for original automobile equipment manufacturers.

<u>United States Court of Federal Claims</u>

No. 97-190T; Succession of Betty Felix Helis v. United States of America

Determination of the fair value of the common stock of an exploration and production company.

<u>Judicial District of Comal County, Texas - 274th Judicial District</u>

No. C99-048C; A. Robert Maxwell v. John R. Weisman, Individually and as General Partner of Flying "W" Properties, Ltd., and Flying "W" Properties, Ltd., a Texas Limited Partnership

Determination of the fair value of the common stock of a highway construction contractor with a quarry operation.

<u>Probate Court -- Harris County, Texas</u>

No. 276,815-404; Estate of J. Howard Marshall, II, Deceased; In Probate Court, No. 3 of Harris County, Texas

Fair market value of the common stock of a holding company owning primarily common and preferred stock of a diversified refining, gas gathering energy trading company.

<u>U.S. Tax Court</u>

Estate of Artemus D. Davis, Deceased v. Commissioner of Internal Revenue - Docket No. 9337-96

Determination of the fair market value of the common stock of a holding company owning primarily a large block of publicly traded stock.

<u>Probate Court - Harris County, Texas</u>

Fair market value of limited partnership interests in a manufacturer of air conditioners and furnaces.

<u>District Court of Harris County, Texas - 164th Judicial District</u>

Michael J. Tedesco v. Innovo, Inc., Innovo Group, Inc., Rick Binet and Patricia Anderson Lasko, f/k/a Patricia M. DeAlejandro

Determination of the fair market value of an option to purchase common stock of a manufacturer and marketer of a broad line of sports-licensed bags and backpacks.

<u>Circuit Court of Tennessee for the Thirtieth Judicial Court of Memphis</u>

Diane Davis Latimer v. Roy Thomas Latimer, Sr. - No. 137384-2 T.D.

Determination of the fair market value of the common stock of a holding company primarily owning large blocks of publicly traded securities in a supermarket chain and an insurance company.

<u>District Court of Harris County, Texas - 129th Judicial District</u>

Edwin E. Dunnam v. Fish Engineering and Construction, Inc. - Cause No. 87-019495

Determination of the fair value of the preferred and common stock of an engineering and construction company.

District Court of Harris County, Texas - 189th Judicial District

Garry Garrison v. Daniel Floeck, C. A. No. 87-52106.

Determination of the fair market value of the common stock of a retail automobile parts company.

District Court of Harris County, Texas - 269th Judicial District

George Harris v. Raymond Corporation and N. J. Malin & Associates, Inc.

Determination of the fair market value of a material handling dealership.

U. S. Tax Court

Estate of Samuel I. Newhouse, Deceased, v. Commissioner

Allocation of value among classes of securities in a multibillion dollar newspaper and magazine publishing company.

U. S. District Court for the Southern District of Texas, Houston Division

Civil Action No. H-88-1071, William J. Carden v. Wespac Investors Trust

Fairness to the Shareholders of a publicly traded Real Estate Investment Trust of the terms of a loan agreement.

U. S. Tax Court

Centel Communications Company, Inc.; Lloyd K. Davis, et al and Fisk Electric Company v. Commissioner

Opinion relating to the financial relationship between a parent company and its subsidiary.

District Court of Harris County, Texas - 125th Judicial District

Determination of damages based on the fair market value of stock in a producer of cedar fiber oil and related products.

Circuit Court of the Fourth Judicial Circuit, Duval County, Florida

Fair market value of stock of a diversified holding company engaged in paper and forest products, public utilities, sugar growing and refining, and investments in marketable securities.

<u>Suffolk (Massachusetts) Superior Court in Equity</u>

Rate of return for a professional sports organization.

<u>U. S. District Court, District of Massachusetts</u>

Pension Benefit Guaranty Corporation.

Methodology of fair market valuation involving shoe findings manufacturers.

Donald W. Barker, CFA, ASA
<u>Expert Witness Testimony</u>

<u>United States District Court, Southern District of Texas Galveston Division</u>

United States v. Gordon E. Davenport, Civil Action No. G-03-923

Deposition

Fair market value of stock representing a minority interest in a private corporation

<u>Probate Court No.1 Travis County, Texas</u>

Steiner, Case No. 75, 542

Deposition

Fair market value of limited partnership interests

<u>United States District Court, Northern District of Oklahoma</u>

United States v. Patricia Vestal, Case No. 00-CV-0092K(J)

Deposition

Fair market value of stock representing a minority interest in a private corporation.

<u>Probate Court of Dallas County, Texas</u>

Anna Gray McLendon Mandel v. Gordon B . McLendon, Jr., Billie P. Odom, et al.

Fair market value of partnership interests.

<u>Probate Court No. 1 of Harris County, Texas</u>

Fairness as to exchange value of debt securities for equity.

<u>District Court of Harris County, 127th Judicial District</u>

Texas American Bank v. B. Moody Shanks

Fair market value of common stock.

United States District Court for the Southern District of Texas- Houston Division

NF Industries, Inc. v. Export-Import Bank of the United States, et. al.

Fair market value of corm-non stock.

District Court of Harris County, Texas

M. Gertner v. G. H. Gertner

Fair market value of common stock.

District Court of Marion County, Texas

First National Bank of Jefferson, Texas v. Frank M. McLaughlin, III, et al.

Damage determination relating to lost income to bank.

United States Federal Tax Court

Nelson Brothers, Inc. v. Commissioner of Internal Revenue

Fair market value of common stock.

Probate Court of El Paso County, Texas

Fairness as to sale of partnership interests.

Recent Business Litigation Testimony

The senior officers of Howard Frazier Barker Elliott, Inc. have been in the business of providing opinions regarding the value of businesses and the securities they issue for litigation purposes for over twenty-five years. A general description of these services may be found in the Litigation Support Services section of this presentation.

To provide an illustration of the types of litigation-related assignments for which HFBE is retained, descriptions of recent testimony follows. All were resolved very favorably for the client. If you would like to talk to the attorneys involved in any of these cases, we would be glad to provide these references. Will Frazier was the HFBE expert witness and appraiser in these cases.

Dispute Among Business Owners

In an arbitartion which was settled prior to a final decison, two partners in a three person limited partnership (Partners A and B) forced the third partner (Partner C) out of his role as a key operations manager of the business held by the partnership. Partners A and B also withheld distributions to Partner C. A and B offered to redeem C's interest at a low value. There was also a dispute as to the percentage of the partnership which was owned by C.

HFBE's role was to determine the value of the business and the value of Partner C's interest. HFBE also provided rebuttal testimony of the expert retaind by Partners A and B. The settlement resulted in a fair price being paid to Partner C. While not a minority oppression case *per se*, this matter had many of the same issues seen in such cases.

Disputed Redemption Value in Shareholders' Agreement

A decedent died owning a 25 percent interest in a Texas C corporation. The shares were subject to a redemption provision in the shareholders' agreement. However, no clear guidance was given as to how trhe shares were to be valued. A dispute arose between the Estate and the remaining shareholders as to the redemption value. The matter was taken to arbitration. HFBE was hired as the valuation advisor to the arbitrtor. The matter was resolved at the value provided by HFBE.

Fair Value Under Colorado State Law

HFBE was retained as a valuation expert by Preston, Reynolds & Co., Inc. under the Colorado's Dissenter's Rights Act. Our role was to determine the fair value, under Colorado law, of a block of shares constituting about 25 percent of the Company's outstanding shares. The Company explores for and produces coalbed methane gas in the western portion of the Powder River Basin in Wyoming and Montana. The primary issues dealt with in the case were the following:

1. <u>Risk Adjustment for Reserve Classification</u>

The Company was not profitable; accordingly, the primary valuation method related to the market value of its underlying natural gas reserves. Petroleum engineers were used to determine the quantities of these reserves, the timing over which the reserves might be produced and the cost of production. It was our role to establish market value considering the different categories of reserves. It has been our experience from numerous transactions and other valuation assignments with oil and gas operators and investors that the amount of discounts or "haircuts" applied to reserves increases sharply as the risk classification moves farther from “proved developed producing”. The plaintiff’s discounts were too small, resulting in inadequate valuation differences between reserve classes. We were able to provide convincing evidence of our position to the court.

2. Should the Company Have Been Sold?

The event which triggered the Dissenter’s Rights action was the sale of the Company. The plaintiffs argued the Company should not have been sold and, further, that it was sold too cheaply. We demonstrated to the court that sale of the Company was the only viable option at that time. Further, the price paid was in excess of what could have been received anywhere else. The buyer was the most synergistic buyer possible.

3. Discounted Cash Flow Analysis

The underlying economic success of the plaintiff’s model was far too aggressive and contained numerous flaws. We assisted in successfully rebutting much of this work, working in conjunction with the Company’s petroleum engineering firm.

Securities Fraud Case

This was a major case involving fraud in the handling of a customer’s account by a “big producer” stockbroker during his employment at two major brokerage firms. His scheme involved forgery to obtain discretionary authority over the account, the “manufacture” of fraudulent account statements sent to the client and the use of overseas trust companies as custodians. The case pointed out the deficiencies in supervision of the broker by his employers and their lack of enforcement of rule infractions. The case was successfully arbitrated before the NASD.

The primary issues encountered in this case were:

1. Broker Supervision

The stockbroker forged powers of attorney granting him discretionary trading authority. The stocks he traded in (penny stocks, mostly) were unsuitable for the account. The account was heavily “churned” in these worthless stocks. No branch management or Office of Supervisory Jurisdiction ever raised this issue. The principals of HFBE hold Series 24 (Principal), Series 7 (General Securities) and Series 63 (State Licensing) licenses with the NASD. Furthermore, given our previous investment banking backgrounds, we are familiar with these issues.

2. Stock Price Manipulation

It was our opinion that, based on the price and volume of many of the stocks held in the portfolio, manipulation was taking place. Through our research we were able to show that the brokerage firm, which, as a rule stayed away from penny stock issues, was the primary market maker and trader in the penny stock issues used by the broker. Most of the trading in these stocks was between a few accounts controlled by the stockbroker. (Besides our client, this broker was pulling the same scam on a number of other individuals, too.) A host of manipulative practices were observed including: artificial transactions, matching (“painting the tape”), price rigging, and joint participation in hidden accounts.

3. Other Violations

In our review of the facts, it was apparent the broker was allowed to continue engaging in many other violations of NASD and SEC rules as well as actions described as improper by the firm's own policy manual. These included: trading away, engaging in corporate finance transactions outside of the firm, sharing commissions with unlicensed individuals, excessive trading of mutual funds and numerous conflicts of interest.

4. Measure of Damages

One of the measures of damages calculated was the construction of a hypothetical portfolio which consisted of the types of investments originally specified by the client. By using benchmarks for these asset classes, we were able to determine what the client should have had in his account at the end of the day.

Damages Resulting from Misappropriation of Intellectual Property

An oil tool manufacturing company sued a large competitor alleging that a former employee had been induced to leave and take with him trade secrets on a new technology about to be employed in the commercial launching of the next generation of a product. HFBE was asked to determine the fair market value of the intellectual property held by the Company as the exclusive possessor of such technology.

Using discounted cash flow techniques, we constructed a valuation model which estimated the net cash flows from the technology assuming an estimated development and launch schedule. Providing convincing support for the myriad of assumptions underlying such a model was key to our analysis. Factors considered were:

1. Competition in the marketplace
2. Pricing for sales and services of newer and older technologies of this type of product
3. Acceptance and anticipation by the marketplace of this technology
4. State of technological development compared to plan
5. Manufacturing profit margins
6. Overhead expenses
7. Industry outlook and forecast for specific services
8. Capital requirements
9. "Roll out" period of new product
10. Required rate of return for investors at this stage of development

The matter was settled favorably for the plaintiff.

Value of Expected Royalties from Patent

HFBE was retained to determine the fair market value of the royalty stream expected from a patent pending relating to technology for the recovery of titanium-bearing minerals from a tar sands hydrocarbon recovery operation in Alberta, Canada. The dispute was related to a marital dissolution in Houston, Texas.

The project involved the construction of a sophisticated discounted cash flow model which took into account the variables associated with the revenues and expenses of the recovery of heavy metals from tar sand extraction. Documentation of the assumptions for the model required an extensive due diligence investigation coupled with economic and technical verification from a number of sources.

We hope these illustrations give you an insight into the expertise and breadth of experience HFBE can provide you. In addition to litigation support and business valuations, HFBE also engages in rendering fairness opinions and other types of financial advisory opinions. HFBE Capital, L.P., our NASD-registered broker/dealer, also provides merger and acquisition advisory services, private placements of debt and equity, senior debt financing and general financial advisory services.