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*Part One of this article appeared in the previous edition of Value Added™ and provided background information on the case as well as an introduction to the Four-Factor Test for Bargaining Parity. A copy of the article can be found on our website at [www.mercercapital.com](http://www.mercercapital.com).*

### The Court's Analysis of Three Transactions

The Court paraphrased *Polack v. Commissioner*<sup>1</sup> and *Palmer v. Commissioner*<sup>2</sup> in introducing its discussion of arm's length transactions:

While listed stocks of publicly traded companies are usually representative of the fair market value of that stock for Federal tax purposes, the fair market value of non-publicly traded stock is "best ascertained" through arm's-length sales near the valuation date of reasonable amounts of that stock as long as both the buyer and the seller were willing and informed and the sales did not include a compulsion to buy or to sell.<sup>3</sup>

While this guidance is flawless as far as it goes, it needs to be viewed, as just indicated, through the filter of the Four Factors of Bargaining Parity.

The Court's decision discusses three transactions in the stock of Glenwood State Bank, the two occurring before the valuation date and the subsequent transaction some 14 months after the valuation date. The Court determined that the two prior sales were not at arm's length:

As to the two prior sales of stock in this case, we also are unpersuaded that either of those sales was made by a knowledgeable seller who was not compelled to sell or was made at arm's length.<sup>4</sup>

The Court actually made two additional comparisons in reaching its conclusion regarding the two prior sales. First, the decision notes that they were both smaller in size (1% or less of the shares) than the subject interest (11.6%). And second, it was noted that neither of these two transactions

## When is Fair Market Value Determined?

*Estate of Helen M. Noble v. Commissioner*

### PART TWO

was made based on an appraisal.

The Court discussed the subsequent transaction at some length at this point:

Petitioners try to downplay the importance of the subsequent (third) sale of the estate's 116 Glenwood Bank shares by characterizing it as a sale to a strategic buyer who bought the shares at

greater than fair market value in order to become the sole shareholder of Glenwood Bank. Respondent argues that the third sale was negotiated at arm's length and is most relevant to our decision. We agree with respondent. Although petitioners observe correctly that an actual purchase of stock by a strategic buyer may not necessarily represent the price that a hypothetical buyer would pay for similar shares, the third sale was not a sale of similar shares; *it was a sale of the exact shares that are now before us for valuation. We believe it to be most relevant that the exact shares subject to valuation were sold near the valuation date in an arm's length transaction and consider it to be of much less relevance that some other shares (e.g., the 10 shares and 7 shares discussed herein) were sold beforehand.* The property to be valued in this case is not simply any 11.6% interest in Glenwood Bank; it is the actual 11.6-percent interest in Glenwood Bank that was owned by decedent when she died. [emphasis added]<sup>5</sup>

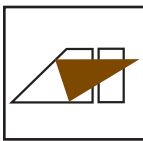
It would appear that the Court determined that because the same 116 shares sold 14 months after the valuation date for \$9,483 per share, they were therefore worth the same \$9,483 per share (less a discount for inflation) at the date of death some 14 months prior.

In reaching this conclusion, the Court did something that both appraisers warned against, in

(Continued on Page 4)

I have enjoyed looking at the world from the perspective of one who values businesses for many years now.

That perspective has evolved into one that causes me to examine much of what I see and hear based on implications related to value - and values - as both pertain to businesses, projects, strategies...



## The Business of Blogs

Introducing Mercer on Value

I recently entered the world of blogs with the debut of *Mercer on Value*, which can be found at [www.merceronvalue.com](http://www.merceronvalue.com). As a blogger I am now one of millions of people, including a growing number of business professionals, that are taking part in this new and exciting form of communication. Since I am also the CEO of Mercer Capital, the blog can also be referred to as a CEO blog.

Let's discuss blogging for a bit and then we will come back to the purpose behind *Mercer on Value*.

**What is a Blog?** A blog is a web log. My blog's URL looks just like a web site - because that's exactly what it is. However, unlike a typical website which contains mostly static information, blogs are updated frequently providing consistently fresh content and insight to their readers. In fact, new content will be added to *Mercer on Value* at least twice a week, and hopefully, more frequently.

Blogs are changing the way people obtain and share information. Blogging is a form of publishing that is easy, instant, and available to all. Dictators have known for centuries that if they can control the press, they can control the populace. The main stream media, or MSM as these institutions are called by bloggers, understand the same thing. Blogs are breaking down the barriers to the control over "the press" and democratizing the publishing business.

**Why are Blogs Important to Business?** Blogs are changing the way businesses communicate. They have ceased to be merely thought of as a fad of political junkies but are being embraced

by businesses throughout the world as a vehicle to communicate directly with customers. A recent cover story in *Business Week* entitled "Blogs Will Change Your Business" is evidence of the new found power of blogs in the business world. (Stephen Baker and Heather Green, "Blogs Will Change Your Business," *Business Week*, May 2, 2005) The article begins with the following:

Look past the yakkers, hobbyists, and political mobs. Your customers and rivals are figuring blogs out. Our advice: Catch up...or catch you later.

I have been writing about technical issues in business valuation for years, but have lacked a vehicle to communicate less technical, but perhaps, more important insights about value. *Mercer on Value* fills that void.

According to the Business Development Institute:

Blogging is one of the most recent manifestations of the Internet, revolutionizing everything it touches in society and business. Soaring adoption rates for blog-based communication are sweeping the world, changing the face of business, and having a significant impact on how companies raise awareness for their brand, products and services. ([www.bdionline.com](http://www.bdionline.com))

### **How Many Blogs Are There?**

A recent count suggests that there are some 9.5 million blogs in the blogosphere (that portion of internet mindspace devoted to blogs). ([www.technorati.com](http://www.technorati.com), as of May 3, 2005)

According to the *Business Week* article referenced above, some 27% of American Internet users

currently use/read blogs at this point, but the numbers are rising.

I was not personally aware of blogging in any conscious way until early this year, when I picked up a book by Hugh Hewitt, entitled *Blog: Understanding the Information Reformation That's Changing Your World*. (Hugh Hewitt, *Blog: Understanding the Information Reformation That's Changing Your World*, Nelson Books, January 2005). Interestingly, this book notes that as of November 2004, there were 4.5 million blogs, so you get a pretty good idea of the current blog growth rate, more than doubling in a short period of time.

**Will Blogs Replace E-Mail And E-Mail Newsletters?** No, blogs are used in addition to these important tools and help solve communications issues that have evolved with them.

### **How Do You Manage the Information You Want to Receive?**

Imagine that you know or have heard of Professor Stephen Bainbridge, a highly-published corporate law professor at UCLA. Imagine further that you want to know what he's thinking about business and economics and even politics and wine. Do you think he would e-mail you personally every time he has a thought? Absolutely not. But Bainbridge has a blog, [www.professorbainbridge.com](http://www.professorbainbridge.com), on which he posts his thinking on a daily basis. Again, imagine if you could be notified the moment that he wrote something and that you could read it, or even a summary of it, whenever and wherever you were located (as long as you had access to the web).

Now picture that there are 10, 15, or 100 such persons or institutions which might include *Mercer on Value*, *The Wall Street Journal, Inc.*, and many other MSM outlets, and that all of their published thoughts on subjects of personal interest to you could be instantly available to you. Wouldn't it be wonderful if all of this key information - the

very information you most want to receive – could be available to you in a way that is organized and easy to access, read, and/or retain?

The good news is that it is.

With an aggregator you can receive notices of postings to many blogs, including *Mercer on Value*. A small investment of time may be necessary to decide what you want to read, or listen to (podcasting), or watch (video blogging or vlogging) all this can be yours, including instant notification and live links. This is possible because of RSS, aka Real Simple Syndication. Using RSS, it is possible to subscribe to specific blogs, or even to certain key words, and have all relevant information at your desktop. At present, only about 5% of internet participants are using RSS and aggregators, but *Business Week* predicts that their use will accelerate.

I predict the same thing because information delivered via an aggregator cuts down the time it takes to read what you want to read, eliminates search time (for the most part), and increases the time available to follow up on interesting aspects of what you are reading. This may just be your chance to leap to the (b)leading edge of the internet! We have included a list of aggregators that you can use at the end of this newsletter.

**About Mercer on Value.** If you've read this far, then you may be interested to read the content found in *Mercer on Value*. While the content for the blog is still evolving, clearly the majority of postings will relate directly or indirectly to business value. As noted on the About page of *Mercer on Value*:

I have enjoyed looking at the world from the perspective of one who values businesses for many years now. That perspective has evolved into one that causes me to examine much of what I see and hear based on implications

related to value – and values – as both pertain to businesses, projects, strategies or whatever.

My target audience consists of business owners, corporate managers and CFO's, both in publicly owned and private companies, and their advisors. And, of course, whoever else finds this blog of interest is a welcomed reader!

*Mercer on Value* is designed to discuss what I observe in the world and business from the perspective of value, broadly defined. So this blog is an extension of the value-related thinking I've been doing for years. Historically, I have written and spoken about technical issues in valuation, on valuation methods, and on the development of valuation theory. I will continue to do these things. However, unless I can relate them to particular matters or issues of interest, I won't be addressing technical subjects in *Mercer on Value*.

I have been posting to *Mercer on Value* for some time now while we

have been creating the blog and bringing it on-line. It has been "out there" on the web, but almost no one knew about it. With this issue of *Value Added*<sup>TM</sup> we're introducing *Mercer on Value* to a wider audience.

**Conclusion.** *Mercer on Value* is now available to you at [www.merceronvalue.com](http://www.merceronvalue.com). All you have to do to is to opt-in, as they say, either by visiting the blog on a regular basis or, more easily, by linking to it via an aggregator, or signing up to be notified by e-mail each time there is a new post. There is a "Subscribe" button at the upper right corner of my blog to facilitate your signing up.

I hope you will take a few minutes to visit the blog and read some of the postings. Feel free to comment about them.

Happy blog reading, and, if you're particularly adventuresome, happy blogging! ♦

**Z. Christopher Mercer, ASA, CFA**  
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## Transactions

### First Bank, Inc.

Louisville, Kentucky

*has been acquired by*

### Central Bancshares, Inc.

Lexington, Kentucky

Mercer Capital Advisors  
acted as financial advisor  
to First Bank, Inc.

Mercer Capital Advisors provides investment banking and transaction advisory services to the middle market. For a listing of successful transactions, please visit our website at [www.mercercapital.com](http://www.mercercapital.com).

# Value Added<sup>TM</sup>

Wouldn't it be wonderful if all of this key information – the very information you most want to receive – could be available to you in a way that is organized and easy to access, read, and/or retain? The good news is that it is.

Should transactions (or events) occurring subsequent to a given valuation date be considered in the determination of fair market value as of that valuation date?

## Fair Market Value

(Continued from Page 1)

effect, assuming that *the exact transaction that occurred was foreseeable*.<sup>6,7</sup> There is a world of difference in the relative risk assessment by hypothetical willing buyers and sellers between two different situations: 1) it is *reasonably foreseeable* that a transaction will occur at a *specific price* and at a *specific time* in the future; or 2) it is *generally foreseeable* that a transaction, or a variety of potential transactions, could occur at some *unknown and indefinite time (or times)* in the future. The Court's analysis effectively assumed the first situation existed at the valuation date when, in fact, the second situation existed. In doing so, the Court ignored the risks of the expected investment holding period from the perspective of hypothetical buyers and sellers at the actual valuation date.

The Court also did not believe that Glenwood Bancorporation had specific motivation to purchase the shares which would cause it to pay more at the subsequent date.

Moreover, as to petitioners' argument, we are unpersuaded by the evidence at hand that Glenwood [Bancorporation] was a strategic buyer that in the third sale paid a premium for the 116 shares. *The third sale was consummated by unrelated parties (the estate and Bancorporation) and was prima facie at arm's length.* In addition, the estate declined to sell its shares at the value set forth in the appraisal and only sold those shares 5 months later at a higher price of \$1.1 million. Although

the estate may have enjoyed some leverage in obtaining that higher price, as suggested by Mercer by virtue of the fact that the subject shares were the only Glenwood Bank shares not owned by the buyer, this does not mean that the sale was not freely negotiated, that the sale was not at arm's length, or that either the estate or Bancorporation was compelled to buy or to sell. [emphasis added].<sup>8,9</sup>

The Court is assuming that transactions occurring between unrelated parties provide prima facie evidence of their arms' length natures. However, independence is only one of the four factors insuring bargaining parity and arms' length transactions. The Court asked Mercer about the nature of this particular transaction. Mercer testified that while a transaction may appear to be at arm's length, it should not be evidence of fair market value if there is an inequality of information regarding the potential transaction.<sup>10</sup>

### APPLYING THE FOUR-FACTOR TEST OF BARGAINING PRIORITY

Fair market value assumes bargaining parity. The Four-Factor Test of Bargaining Parity involves:

1. *Independence.* If the parties are related in some way, transactions between them should be viewed with skepticism.

2. *Reasonably and Equally Informed.* If both parties are not reasonably and equally informed about the facts and circumstances related to the investment, a transaction should also be viewed with skepticism.

3. *Absence of Compulsion.* If one or both of the parties is acting under any compulsion to engage in the transaction, then it is generally understood that the transaction is not evidence of fair market value.

4. *Financial Capacity to Transact.* If one of the parties lacks the financial capacity to engage in a transaction, the results of the negotiation may not reflect equal bargaining power.

The Mercer Report provided background information for the two transactions prior to the valuation date (at page 22) as follows:

1. One transaction involving seven shares occurred in July 1996 at \$1,500 per share (approximately 11% of book value). The seller was Linda Green, the daughter of a long-time shareholder. Upon attempting to contact Ms. Green to discuss the circumstances of her sale of stock, we learned that she had died within the last year.
2. Another transaction occurred in June 1995 when a director of the Bank sold ten shares for \$1,000 per share. The price represented approximately 8% of

TableONE

Subsequent Dividends Paid by Glenwood State Bank						
Dividends Paid	Dollars	Per Share	Dividends 116 Shares	Pro Forma Book Value*	Book Value 116 Shares	
<i>Between 10/24/97</i>						
<i>and 12/31/97</i>	\$1,200,000	\$1,200	\$139,200	\$15,251,000	\$1,769,116	
1998	\$1,000,000	\$1,000	\$116,000	\$15,009,000	\$1,741,044	
1999	\$3,000,000	\$3,000	\$348,000	\$12,676,000	\$1,470,416	
2000	\$500,000	\$500	\$58,000	\$13,047,000	\$1,513,452	
2001	\$1,150,000	\$1,150	\$133,400	\$12,678,000	\$1,470,648	
<b>Total Dividends</b>	\$6,850,000	\$6,850	<b>\$794,600</b>			

\* Assuming the October 1997 Transaction had not occurred and the dividends were paid

... the parties engaging in that subsequent transaction were not dealing with the same information about the value of the subject interest.

December 31, 1994 book value. Management indicated that the director, Mr. Robert Hopp, desired to turn his non-dividend paying stock in the Bank into an earning asset and offered it to the Bank. The agreed upon price was \$1,000 per share. Bank management stated that they knew of no compulsion to sell on Mr. Hopp's part (financial or otherwise) and that he remained a director of the Bank until his death several years later. As a director, we should be able to assume that Mr. Hopp was reasonably informed about the Bank and the outlook for its performance, as well as about prior transactions in the stock. We were unable to contact Mrs. Hopp to discuss her recollection of the circumstances of the transaction; however, we have no reason to question the recollections of the Bank's chairman.

The Mercer Report also discussed the subsequent transaction and analyzed it in light of the facts and circumstances in existence at the subsequent transaction date, at least as they related to Glenwood State Bank and Glenwood Bancorporation. As noted above, the Mercer Report indicated that

a significant change in policy would have materially changed the value of the subject 116 share block. Glenwood Bancorporation, after many years of not desiring to upstream dividends from Glenwood State Bank, changed its mind. The reason for this change was a decision to build a new bank in Council Bluffs, Iowa, to enter the greater Omaha metropolitan market. This decision required capital that was lying dormant in the Bank, and would require that significant dividends be paid by the Bank to the Company. Importantly, Glenwood Bancorporation did not inform the Estate's representatives of this change in policy prior to the transaction. So the second factor of the four-factor bargaining parity test was not met. This was noted in the Mercer Report.

The Mercer Report did indicate that such a change in dividend policy could occur at Glenwood Bancorporation (i.e., was reasonably knowable); however, the analysis indicated that no rational, independent investor would assume that the change would occur in such a short time as a year or so, and that if dividends were to be paid, there would be a material, upward pressure on the value of the Bank's minority shares.

It is important to place this subsequent change in dividend policy in perspective. Table One (provided in the Mercer Report in the discussion of the subsequent transaction) should indicate clearly that if the dividend policy had been in place at the valuation date, the valuation conclusion should have been significantly higher than either the Mercer conclusion or the conclusion of the Herber Report or that of the Court based on the subsequent transaction.

As noted above in the discussion of the nature of subsequent transactions, something material changed between the date of death and the subsequent transaction. Glenwood Bancorporation decided that it desired to receive dividends from Glenwood Bank after many years of not having the Bank pay dividends. This change in policy necessarily had a change on the value of the Bank's shares since, other things being equal, an investment that pays dividends is worth more than one that does not pay dividends.

The Court's analysis does not mention the remaining, critical element of a fair market value transaction that both parties be reasonably (and equally) informed about the investment. This is a point that Mercer

**Table TWO**

Transactional Data	Transactions Prior to the Valuation Date		The Subsequent Transaction
Seller	Robert Hopp (Director of Bank)	Linda Green	Estate of Helen Noble
Transaction Date	June 1995	July 1996	October 24, 1997
Buyer	Glenwood Bancorporation	Glenwood Bancorporation	Glenwood Bancorporation
Number of Shares	7 Shares	10 Shares	116 Shares
Price per Share	\$1,000 per Share	\$1,500 per Share	\$9,483 per Share
Price/Book Value	8% of Book Value	11% of Book Value	69% of Book Value
Dividends Reasonably Foreseeable?	No	No	No to Seller / Yes to Buyer
Four-Factor Bargaining Parity Test			
1. Independent?	Yes	Yes	Yes
2. Reasonably (Equally) Informed?	Yes	Unknown	No
3. Absence of Compulsion?	Yes	Unknown	Yes
4. Financial Capacity to Transact?	Yes	Unknown	Yes
<b>Meets Bargaining Parity Test</b>	<b>Yes</b>	<b>Unknown</b>	<b>No</b>

In reaching this conclusion, the Court did something that both appraisers warned against, in effect, assuming that the exact transaction that occurred was foreseeable.

addressed both in his direct testimony (report) and in cross-examination.

Given that the Estate sold 116 shares for \$1.1 million on October 24, 1997, consider the following regarding equal and reasonable information:

- Did the Estate's representatives know that, between that date and December 31, 1997, the Company would cause the Bank to declare and to pay dividends totaling \$139,200 on those very same 116 shares? Management of the Company did not inform the Estate's representatives of this fact or intention.
- Did the Estate's representatives know that the Company would declare and pay nearly \$800,000 in dividends (\$6,850 per share) on the Estate's 116 shares between the sale date and the end of 2001? Management of the Company did not inform the Estate's representatives of this fact or intention.
- Following the payment of \$6,850 per share in dividends over the next four years, the 116 shares owned by the Estate would have had a then (2001) book value of \$12,648 per share (relative to the sale price in 1997 of \$9,483 per share).

In fact, both the Seim Johnson and Herber Reports stated the following about the expectation of future dividends:

Glenwood State Bank has not paid any dividends since May of 1984 and *has indicated no intention to pay dividends in the near future*. This decreases the value of the common stock, and, also, it adversely impacts a willing buyer's decision to purchase the stock. [emphasis added, Seim Johnson Report at page 7]

As of September 2, 1996, Glenwood State Bank had not paid a dividend in over a decade and *had no plans to pay dividends in the future*. [emphasis added, Herber Report, page 15]

These valuation reports, prepared just shortly after the date of death (Seim Johnson) and much later (Herber), affirm the stated policy of the Bank that was provided to Mercer Capital during interviews held in 2004. They also affirm the fact that there was a significant change in policy between the date of death and the time of the third transaction some 14 months later.

The point of this discussion is that there was a material change of facts between the valuation date and the subsequent transaction and this change of facts was known to only one of the two parties to the transaction. This causes the subsequent transaction to fail the four-factor bargaining parity test and disqualifies the transaction as an arm's length transaction in the context of a determination of fair market value. In fact, had the change of policy been known, it is almost certain that the subsequent transaction would have occurred at a price substantially higher than the actual price of \$9,483 per share.

The four-factor bargaining parity test is summarized for the three transactions in Table Two, found on page 5.

It would appear that the prior transaction involving Mr. Hopp, the former director of Glenwood State Bank, would meet the four-factor test. It occurred at a very low price (relative to book value) at a time when a knowledgeable, independent buyer had no expectations of future dividends or other avenues to liquidity within a reasonable timeframe.

It is simply unknown if the second prior transaction meets the four-factor test.

*However, it is clear that the subsequent transaction does not*

*meet the test*. The parties were clearly not equally informed about the change in dividend policy that Glenwood Bancorporation planned to implement immediately following the transaction.

Thus, the question is, how can a subsequent transaction that would not pass the four-factor test for arm's length bargaining parity at the date it occurred provide evidence of the fair market value of shares some 14 months prior to that date? In the opinion of the author, it cannot.

The Court considered that the sale was negotiated at arm's length as prima facie evidence that the subsequent transaction was evidence of fair market value. However, it should be clear from the analysis above, which was presented to the Court in the Mercer Report, that there was a material change of circumstances between the date of death the date of the subsequent transaction. It should further be clear that the parties engaging in that subsequent transaction were not dealing with the same information about the value of the subject interest.

## CONCLUSION

*Estate of Noble* raises two very important issues for business appraisers:

- The relevance of subsequent transactions (or events in determinations of value as of a given valuation date
- The nature of arm's length transactions in fair market value determinations

Should transactions (or events) occurring subsequent to a given valuation date be considered in the determination of fair market value as of that valuation date? If so, how should they be considered in the context of facts and circumstances in existence at the valuation date? How long after a given valuation date can information from a subsequent transaction be considered relevant? Opening the

door to the routine analysis of subsequent transactions as providing evidence of valuation at earlier dates would seem to fly in the face of the basic intent of the fair market value standard of value.

Are transactions occurring between apparently independent parties prima facie evidence of arm's length transactions in the context of fair market value? The four-factor test of bargaining parity introduced above questions the relevance of at least certain otherwise arm's length transactions as providing evidence of fair market value.

The questions and issues raised by *Estate of Noble* are important for appraisers and for taxpayers. Regarding subsequent transactions, it would seem that appraisers and the Tax Court should focus on events known or reasonably foreseeable as of the valuation date as the basic standard for fair market value determinations. Any other approach would seem to raise more questions than can be answered, and would seem to place at least one party in a valuation dispute at a distinct disadvantage.

Finally, regarding the nature of arm's length transactions, it would seem that a more definitive understanding of the nature of "arm's length" is needed than the mere fact that parties appear to be independent of each other. The Four-Factor Bargaining Parity Test above indicates that independence is only one of four factors needed to define an arm's length transaction characterized by equal bargaining power. ♦

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1. *Polack v. Commissioner*, 366 F.3d 608, 611 (8th Cir. 2004), affg. T.C. Memo. 2002-145.

2. *Palmer v. Commissioner*, 62 T.C. 684, 696 698 (1974).

3. *Noble v. Commissioner*, T.C. Memo, 2005-2, January 6, 2005, pp. 12-13.

4. *Supra*. Endnote 3, p. 20.

5. *Supra*. Endnote 3, p. 25.

6. Counsel for the Internal Revenue Service asked Mercer a series of questions regarding the third transaction. The last question and answer was:

Q. Right. And this stock was liquidated in slightly over one year.

R. Sure. Hindsight is 20/20. I'm saying that [it] is not a reasonably foreseeable event that in 1.14 years that the stock would be sold at the price it was sold at, in my opinion.

7. Mr. Herber, the expert retained by the Internal Revenue Service, was asked directly about whether he thought the third transaction was foreseeable:

THE COURT: Do you think that as of the valuation date that subsequent sale was foreseeable by a hypothetical buyer and seller?

THE WITNESS: No.

THE COURT: Why not?

THE WITNESS: Because of the facts that are talked about in the report. They had not paid dividends. They did not want to sell the bank. There was definitely – you could not foresee that specific transaction.

THE COURT: But could you foresee the fact that there would be some transaction with a period of time?

THE WITNESS: Oh, yes, yes.

8. *Supra*. Endnote 3, p. 25.

9. First, the Court apparently assumed that the estate had benefit of the Seim Johnson Report. In fact, it was commissioned by Glenwood State Bank and was not provided to the estate's representatives (per counsel for the estate). Second, counsel for the estate did refer to Glenwood Bancorporation as being a strategic buyer. Mercer referred to Glenwood Bancorporation as "motivated" because of the dividend situation. Nevertheless, the Court was not persuaded.

10. The Court's question was raised immediately following Mercer's "20/20 hindsight" comment quoted in Endnote 6 above.

THE COURT: That sale, though, Mr. Mercer, as far as you know that was an arm's-length sale?

THE WITNESS: Your honor, as far as I know it was an arm's-length sale, but let me be careful to answer a little further. An arm's-length sale does not necessarily provide evidence of fair market value even if the transaction occurs prior to the valuation date. An arm's-length sale with compulsion is – that's arm's-length, but there is compulsion [and it] would not qualify as evidence of fair market value. An arm's-length sale with lack of knowledge would not qualify as evidence of fair market value. And I'm suggesting that this transaction was an arm's-length sale with lack of knowledge.

THE COURT: And specifically what was the lack of knowledge? I know you have testified earlier to it, but if you would repeat it, I would appreciate it.

THE WITNESS: That the relationship between Glenwood Bank Corporation [Bancorporation], the likelihood that dividends would be paid in the future, or that I would have a chance to negotiate for this a favorable sale. The exist-

## Mercer Capital Highlights

### Announcements:

Mercer Capital is pleased to welcome **Matthew G. Washburn** to our professional staff as a Marketing Associate. A graduate of Lambuth University, Mr. Washburn brings a wealth of marketing and public relations expertise to Mercer Capital.

**Brent A. McDade** has been awarded the Certified Business Appraiser (CBA) designation from the Institute of Business Appraisers (IBA). This distinction, which denotes a level of competence attained only by the most accomplished business appraisers.

### Speaking Engagements:

**June 10, 2005**

**PKF North American Network Financial Institutions Forum Teleconference**

Atlanta, GA

"Bank Valuation and Value Drivers"

*Andrew K. Gibbs, CFA, CPA and*

*Z. Christopher Mercer, ASA, CFA*

**June 22, 2005**

**Business Valuation Resources Teleconference**

"Valuing Intellectual Property and Other Intangible Assets"

*Matthew R. Crow, ASA, CFA, moderator*

**August 2, 2005**

**Wichita Program on Appraisal for Ad Valorem**

Wichita, KS

"Mergers & Acquisitions: The Transactions Behind the Transaction"

*Travis W. Harms, CFA, CPA/ABV and*

*Z. Christopher Mercer, ASA, CFA*

# Value Added™

Opening the door to the routine analysis of subsequent transactions as providing evidence of valuation at earlier dates would seem to fly in the face of the basic intent of the fair market value standard of value.



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## In This Issue...

Part Two: When is Fair Market Value Determined?

*Estate of Helen M. Noble v. Commissioner*

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Mercer Capital Highlights

Mercer Capital Advisors Current Offerings

## Fair Market Value

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ence of Glenwood Bank Corporation, we don't know that anyone knew that Glenwood Bank Corporation even existed because the shareholders of the bank had no reason to know anything about it. They file separately to the Federal Reserve, you know, to the federal authorities.

And the only reason we know about it is because we asked. And when we asked about the holding company, then we looked at the historical financial statements of the holding company. Now to show you the relationship between the bank and the holding company and the lack of interest of this management in paying shareholder dividends prior to the valuation date, there was over \$400,000 of debt at the parent company, Glenwood Bank Corporation. It would have been an easy thing to do to upstream a dividend to pay that debt.

Rather than do that and pay the dividend to the shareholder [the 11.6% that would go to the 11.6% interest holder in the Bank], they went and bought more stock in Glenwood Bank Corporation, putting \$400,000 into Glenwood Bank Corporation and paying down that debt externally. That's a fact. That would not give me a great deal of conviction that I was likely to get dividends any time real soon.



## Mercer Capital Advisors Update

***We are currently offering the following profitable companies to qualified prospects***

- **Nationwide Telecommunications Service Provider** specializing in site acquisition, zoning services, construction management and tower management

***To obtain a company profile, visit our website at [www.mercercapital.com](http://www.mercercapital.com)***

For additional information, call Nicholas J. Heinz at 901.685.2120 or e-mail him at [heinz@mercercapital.com](mailto:heinz@mercercapital.com).

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