

Tennessee Family Law

Valuation & Forensic Insights for Attorneys

Volume 3, No. 2, 2020

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Newsletter Supplement

Industry at a Glance:
Insurance Agencies

This quarter's issue of the Tennessee Family Law Newsletter examines the importance of the valuation date in valuations for divorce. The valuation date represents the point in time at which the business, or business interest(s), is being valued. Understanding the valuation date of an asset valuation, such as a privately held business, for marital dissolution is an important consideration, especially for matters which have extended over a lengthy time and those that may be impacted by significant global events such as COVID-19. An accurate and timely valuation should consider current conditions and future expectations. If a prior valuation exists, it may require an update or a secondary valuation using a current date of valuation.

In this issue we also highlight the Insurance industry in our "Industry at a Glance" feature. We specifically focus on insurance agencies. Mercer Capital has extensive expertise in the insurance industry through numerous engagements, organized research, and written content. The article highlights valuation methodologies, unique aspects and terminology, and value drivers of insurance agencies.

We appreciate the great feedback from the previous issues of this newsletter. If you have questions about the content of this newsletter, please contact **Scott Womack** or **Karolina Calhoun**.

The Importance of the Valuation Date in Divorce

During the divorce process, a listing of assets and liabilities, often referred to as a marital balance sheet or marital estate, is established for the purpose of dividing assets between the divorcing parties. Some assets are easily valued, such as a brokerage account or retirement, which hold marketable securities with readily available prices. Other assets, such as a business or ownership interest in a business, are not as easily valued and require the expertise of a business appraiser. Upon retaining a valuation or financial expert, together with the family law attorney, it is important to understand and agree upon certain factors that set forth a baseline for the valuation. These may be state specific, such as case precedent and state statute. One of these considerations is the valuation date, which differs from state to state.

Valuation Date Defined

The valuation date represents the point in time at which the business, or business interest(s), is being valued. The majority of states have adopted the use of a current date, usually as close as possible to mediation or trial date. Other states use date of separation or the date the divorce complaint/petition was filed. See the map on page 2 for a preferred valuation date summary by state (note that the summary may be modifiable for recent updates in state precedent).

Those states that use date of separation or date of complaint/petition as the valuation date face a bit of “noise” and complexity when the divorce process becomes lengthy and/or when there are significant impacts to the economy and/or industry in which that business operates.

As an example, consider the timeframe from December 31, 2019 to now, Summer 2020, and the economic reverberation of COVID-19. A valuation as of these two dates will look quite different due to changes in actual business performance as well

as shifts in future expectations/outlooks for the business and its industry. *However, this is not only a consideration for those states which use date of separation or date of petition. This is also an important consideration for matters which have extended over a prolonged period.* It is also critical for current matters – we are all aware that much has transpired since December 31, 2019 – as that valuation date may no longer accurately reflect the overall picture of the business, necessitating a secondary valuation, or alternatively, an update to the prior valuation.

Let's take a deeper dive at understanding the importance of valuation date as it relates to the divorce process.

Why Does the Valuation Date Matter?

Laws differ state to state regarding valuation date and standard of value (generally fair market value or fair value). There are other nuances related to the business valuation for divorce process, such as premise of value which is often a going-concern value as opposed to a liquidation value. After the standard of value, premise of value, and the valuation date have been established, the business appraiser must then incorporate relevant known and knowable facts and circumstances at the date of valuation when determining a valuation conclusion. These facts and trends are reflected in historical financial performance, anticipated future operations, and industry/economic conditions and can fluctuate depending on the date of valuation.

Using our prior example, the conditions of Summer 2020 are vastly different than year-end 2019 due to COVID-19. For many businesses, actual performance financial performance in 2020 has been materially different than what was expected for 2020 during December 2019 budgeting processes. The current environment has made the facts and circumstances in anticipated future budget(s), both short-term and long-term, even more meaningful. The income approach reflects the present value of

some clients may be related to the cost of another valuation. However, the importance of an accurate and timely valuation should far outweigh the concerns of additional expense to update a conclusion.

It is important to discuss these elements with your expert as the process may depend on the length of time which has transpired since the original valuation and the facts and circumstances of the business/economy/industry. Your expert will be able to determine if an acceptable update may be simply updating prior calculations; however, if much has changed, such as expectations for the future performance of the business, the approach may involve a secondary valuation using a current date of valuation.

Another consideration to keep in mind: depending on jurisdiction, state law may deem the value of the business after separation but before divorce as separate property. If this is the case, two valuation dates are necessary.

Concluding Thoughts

The litigation environment is complex and already rife with doom and gloom expectations. We have previously written

about the phenomenon referred to as **divorce recession** in family law engagements. Understanding the valuation date of an asset valuation, such as a privately held business, for marital dissolution is an important consideration, especially for matters which have extended over a lengthy time and those that may be impacted by significant global events such as COVID-19. Speak to your valuation expert when these matters arise. The already complex process of business valuation becomes even more complex with the passing of time and also in the midst of economic uncertainty.



Karolina Calhoun, CPA/ABV/CFF

901.322.9761 | calhounk@mercercapital.com



Scott Womack, ASA, MAFF

615.345.0234 | womacks@mercercapital.com

Litigation Support

Business Valuation & Forensics Services

Mercer Capital is a national business valuation and financial advisory firm. We are frequently engaged to provide support in litigation disputes. We bring a team of experienced and credentialed experts and over 35 years of experience to the field of valuations, forensic analysis, and litigation support. Assisting our clients through the entire dispute process, we provide initial consultation and analysis, as well as expert testimony and trial support. We provide high quality services evaluating and analyzing complex financial situations and communicating conclusions in a clear and concise manner.

- » Family Law Litigation
- » Business Litigation
- » Buy-Sell Disputes
- » Partnership Dissolution
- » Shareholder Oppression
- » Shareholder Disputes
- » Estate & Gift Tax Valuations
- » Collaborative Law
- » Business Damages & Lost Profits
- » Securities Litigation
- » Breach of Contract
- » Business Interruption
- » M&A Disputes
- » ESOP/ERISA Disputes
- » Breach of Fiduciary Duties

Tennessee Case Review

Fuller v. Fuller

Topic: Trail Income and Income Determination for Alimony & Child Support

Key issues of this matter include income determination, alimony determination, and award of attorney's fees and costs incurred during appeal. The case was tried over two days in November and December 2015 and the Trial Court entered its final judgment in January 2016. Husband appealed the judgment. The Appellate Court affirmed in part, and vacated, in part, the Trial Court's judgment. The matter was heard on remand in August and September 2017. Husband subsequently filed a motion to alter or amend and to make additional findings of fact. In April 2018, the Trial Court dismissed the motion.

A financial expert witness, both from a valuation and forensic scope, can significantly assist in the court's determination of divorcing parties' ability and need to pay in its determinations for spousal support

By way of background, Wife filed for divorce in December of 2014, after 27 years of marriage. At the time, Husband was age 52 and working in financial planning, and wife was age 50 and working as a nurse. In response to Husband's appeal of the Trial Court's judgment, the Appellate Court determined that the Trial Court had properly classified and valued Husband's trail income in the property division of marital assets, but, erred by also including that same trail income in Husband's income determination for the purpose of alimony and child support. The Court defines "trail income" throughout this case's opinion as the residual income from assets previously sold but still being managed.

On remand, the Court thoroughly reviewed Husband's historical gross and net incomes (incomes included from multiple sources), business expenses, and the methodology by which to calculate Husband's true income. During the period observed, the Court found that Husband's business pays for expenses in the range of \$80,000 - 95,000 per year. Husband did not

provide supportable evidence for the total expenses; the Court determined that these expenses were inflated. Per the ruling, *"Defendant's claimed business expenses are not credible, not documented and unreasonable as compared to what he claimed in 2011, which was prior to being involved in court."*

Following the Court's investigation and analysis of the incomes and expenses, regarding the alimony determination, per the Ruling, *"the Court finds that Defendant inflated his personal expenses and that many of those expenses he was claiming as his own personal monthly expenses, he has also deducted as business expenses from his business. Based upon this lack of credibility, the Court finds the Defendant has the ability to pay over \$2,000 [alimony per month] in that he is giving more than \$2,000 to charity."* The Court concluded that Husband earned approximately \$200,000 per year and has the ability to pay his economically disadvantaged ex-spouse \$1,500 per month as alimony in futuro. Husband appealed again, however, in January 2019, the parties returned to Court and announced that they had resolved the issues.

As Tennessee Code Annotated § 36-4-121(b)(1)(E) (Supp. 2016) provides: "Property shall be considered marital property as defined by this subsection (b) for the sole purpose of dividing assets upon divorce or legal separation and for no other purpose; and assets distributed as marital property will not be considered as income for child support or alimony purposes, except to the extent the asset will create additional income after the division."

Double-dipping, as in this matter, and the secondary example of business earnings being used for valuation of marital asset and as a basis for income determination for alimony and child support, is a complex matter and calls for the expertise and analysis of a financial expert

A key issue was the use of trail income in asset valuation for division of marital assets as well as in income determination for the purposes of alimony. The trail income in this matter derived

from assets previously sold but that were creating residual income. As business valuation experts, we also observe, and must consider the residual income used for the purpose of business valuation and the extent to which it should not overlap with income determination for purposes of alimony and child support conclusions. If one does overlap, this may be referred to as “double-dipping,” when the earnings that contribute to value in a business valuation are also counted in total compensation; effectively, the earnings are not carefully segregated for asset valuation and true income determination.

A financial expert witness, both from a valuation and forensic scope as depicted in this case, can significantly assist in the court's determination of divorcing parties' ability and need to pay in its determinations for spousal support. Double-dipping, as in this matter and the above secondary example of business earnings being used for valuation of marital asset and as a basis for income determination for alimony and child support, is a complex matter and calls for the expertise and analysis of a financial expert.

Click [here](#) for the opinion.

Helpful Resources

Cautionary Tales of Valuation Adjustments and Potential Forensic Litigation Implications in Litigation Presentation

Karolina Calhoun, CPA/ABV/CFF presented this topic at the NACVA 2020 Business Valuation and Financial Litigation Virtual Super Conference. Valuations of a closely held business in the context of litigation such as in a contentious divorce can be multifaceted and may require additional forensic investigative scrutiny. It is important to consider the potential forensic implications of valuation adjustments as they may lead to other analyses. For example, in a divorce business appraisal, a valuation adjustment for discretionary (personal) expenses may, in turn, provide an implied “true income” and pay ability of a spouse. This session addressed this and other examples as well.

[Download the Slide Deck](#)

Active Passive Appreciation Presentation

This presentation, delivered by Z. Christopher Mercer, FASA, CFA, ABAR at the AICPA 2018 Forensic & Valuation Services Conference, covers when and why an active passive analysis is needed, how these analyses are typically done, and the importance of working with engaging counsel for jurisdictional nuances.

[Download the Slide Deck](#)

Lifestyle / Pay & Need Analysis Presentation

A lifestyle analysis is an analysis of each party's sources of income and expenses. It is used in the divorce process to demonstrate the standard of living during the marriage and to determine the living expenses and spending habits of each spouse. It is typically a more in-depth analysis than the financial affidavits required in the divorce process and is prepared by a forensic accountant. The details in the analysis serve as verification of net worth and income, and expense statements submitted by both spouses can help a judge determine the equitable distribution of marital assets as well as alimony needs. This presentation was delivered by Karolina Calhoun, CPA/ABV/CFF at the AICPA 2018 Forensic & Valuation Services Conference.

[Download the Slide Deck](#)

[Download the article “What Is a Lifestyle Analysis and Why Is it Important?”](#)

Mercer Capital News

Speaking Engagements

May 18, 2020

Z. Christopher Mercer, FASA, CFA, ABAR

"The Highs and Lows of the Integrated Theory of Business Valuation: Tackling the Market Participant Acquisition Premium and the Marketability Discount"

NYSSCPA/FAE Business Valuation & Litigation Services Annual Conference, New York, NY

June 19, 2020 & August 7, 2020

NACVA Business Valuation and Financial Litigation Virtual Super Conference, Philadelphia, PA

Karolina Calhoun, CPA/ABV/CFF

"Cautionary Tales of Valuation Adjustments & Potential Forensic Implications in Litigation"

Z. Christopher Mercer, FASA, CFA, ABAR

"Vision 2020: The Future of Our Profession & Your Role In It"

November 9-11, 2020

AICPA Forensic & Valuation Services Conference

Karolina Calhoun, CPA/ABV/CFF

"Transaction Method: Maneuvering the Databases"

Z. Christopher Mercer, FASA, CFA, ABAR

"Advanced Issues in Gift and Estate Tax Valuation" and "Valuing S Corps and Other Flow-Through Entities Post TCJA"

Travis W. Harms, CFA, CPA/ABV

"Strategic Performance Measurement: What Moves ROIC" and "Wall Street vs. Main Street: Stock Market vs. Closely Held Business Value"

January 7, 2021

Karolina Calhoun, CPA/ABV/CFF

"Cautionary Tales of Valuation Adjustments & Potential Forensic Implications in Litigation"

FiCPA Valuation, Forensic Accounting & Litigation Services Conference, Fort Lauderdale, FL

New Hires and Promotions



Mercer Capital welcomes **Justin J. F. Ramirez, AM** to our analytical staff as a Senior Financial Analyst in our Houston office. In addition, Mercer Capital welcomes **Harrison Holt** and **Ash Midyett** as Financial Analysts in our Memphis office.

Additionally, Mercer Capital is pleased to announce **Zachary M. Barber, CPA**, **John T. (Tripp) Crews, III**, and **David W. R. Harkins** have been promoted to Senior Financial Analysts.

Family Law Services

Mercer Capital is a national business valuation and financial advisory firm with offices in Memphis, Nashville, Houston, and Dallas. We bring a team of experienced and credentialed experts and over 35 years of experience to the field of dispute analysis and litigation support. Services for family law attorneys and advisors are listed below.

Valuation Services

- » Valuations of Privately Owned Businesses and Professional Practices
- » Valuations of Intellectual Property, Tradename, and Other Intangible Assets
- » Valuations and Determination of Personal vs. Enterprise Goodwill and Active vs. Passive Appreciation
- » Valuations of Stock Options, Restricted Stock, Pensions, Notes, and Other Investment Assets
- » Valuation of Employment Contracts and Compensation Agreements

Forensic Services

- » Assistance with Financial Affidavits
- » Equitable Distribution Analysis
- » Lifestyle Analysis
- » Pay and Need Analysis
- » Income Determination
- » Alimony Calculation
- » Classification of Assets and Liabilities
- » Tracing Services
- » Dissipation Analysis

Advisory Services

- » Expert Witness Testimony
- » Serving in Mediation, Arbitration, or as Court-Appointed and/or Mutually Agreed-Upon Experts
- » Serving as the Financial Neutral in a Collaborative Divorce
- » Assistance with Discovery
- » Critique of Opposing Expert Reports
- » Impact of Transactions on Valuation
- » Economic Research
- » Public Securities, Market, and Industry Research
- » Assistance with Depositions and Cross-Examination
- » Developing Case Strategy
- » Preparation of Demonstrative Exhibits

Who We Serve

- » Businesses – Private & Public
- » Divorcing Spouses
- » Attorneys
- » Courts, Mediators, and Arbitrators
- » Business Owners
- » Family Offices
- » High-Wealth Individuals
- » Others in Need of Neutral, Independent Experts

Our Qualifications

- » Deposition and Testimony Experience
- » Technical and Industry Expertise
- » National Reputations for Independence and Objectivity
- » Valuation and forensic credentials from the AICPA, the American Society of Appraisers, the CFA Institute, the Royal Institute of Chartered Surveyors, and the National Association of Certified Valuators and Analysts
- » Trained in Collaborative Law

Scott A. Womack, ASA, MAFF

womacks@mercercapital.com | 615.345.0234

Karolina Calhoun, CPA/ABV/CFE

calhounk@mercercapital.com | 901.322.9761

Z. Christopher Mercer, FASA, CFA, ABAR

mercerc@mercercapital.com | 901.685.2120

Nicholas J. Heinz, ASA

heinzn@mercercapital.com | 901.685.2120

Timothy R. Lee, ASA

leet@mercercapital.com | 901.322.9740

J. Michael Sousoulas, CPA

sousoulasm@mercercapital.com | 901.322.9746

Industry at a Glance

Insurance Agencies

Introduction

Insurance agencies are one of the most common types of businesses, but they can also be one of the most misunderstood – both from an economic and a valuation perspective. The insurance industry is loaded with acronyms, regulatory terms, and terminology that can be confusing for attorneys, business advisors, potential investors, and even consumers. So when valuation questions or controversies arise, it is critical to hire a business valuation expert with industry experience rather than a general appraiser.

Terminology

Insurance Agency

Insurance agencies are generally captive (meaning they only distribute products from a single carrier, such as State Farm or Allstate) or independent (meaning they can represent and sell products from multiple carriers). The focus of this article is the independent agency, which can range from a one-person “lifestyle business” to a multi-office, professionally managed insurance distribution platform.

Insurance Carrier or Underwriter

Insurance carriers, also called underwriters, collect insurance premiums and bear the underwriting risk when accidents occur and claims are paid. They develop insurance products/services, file rates with state regulators, and distribute products through a mix of captive agents, independent agents, or directly to the consumer via online channels.

Commission Revenue

As a consumer, you probably pay monthly or annual premiums to an insurance carrier for home or auto insurance. A portion of that premium (say 10%) is remitted to the insurance agency as a commission – and this represents top-line revenue for the

insurance agency. A business owner might quote the size of his or her agency with reference to premium dollars, but that is not the same thing as revenue to the agency.

EBITDA

The EBITDA acronym is not unique to the insurance industry. But it is important enough – and misunderstood enough – that it deserves mention here. EBITDA stands for Earnings before Interest, Taxes, Depreciation, and Amortization. As a business, an insurance agency is not particularly capital intensive and generally has a high degree of recurring revenue with favorable margins that are attractive to lenders. For these reasons, market participants (buyers, lenders, investors, and analysts) typically use EBITDA as a proxy for cash flow and profitability.

Valuation Approaches

Asset-Based Approach

The asset-based approach can be applied in different ways, but in general it represents the market value of a company's assets minus the market value of its liabilities.

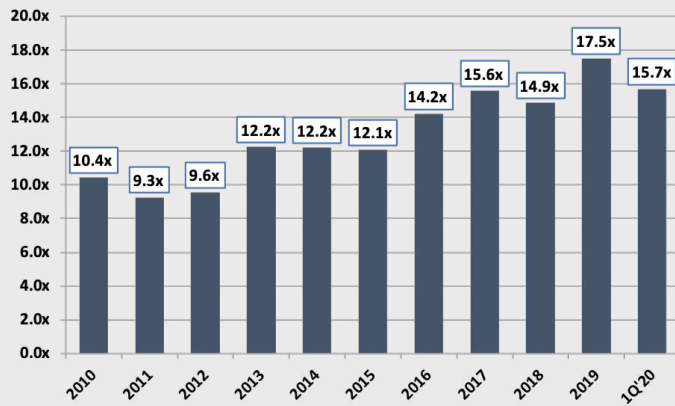
Investors act based on perceived required rates of return and only consider assets as a source of rate of return. For an insurance agency, it is the income generated by these assets rather than the assets themselves that typically drives the value of the business. For this reason, the asset-based approach is typically not the sole (or even primary) indicator of value.

Market Approach

The market approach uses market data from comparable public companies or transactions of similar companies in developing an indication of value. In many ways, this approach goes straight to the heart of value: a company is worth what someone is willing to pay for it.

In some industries, there are ample comparable public companies that can be relied on to provide meaningful market-based indications of value. In the insurance brokerage space, there are several publicly traded companies (see Figure 1), but comparing these large, diversified, increasingly global businesses to the typical private, independent agency, can be problematic.

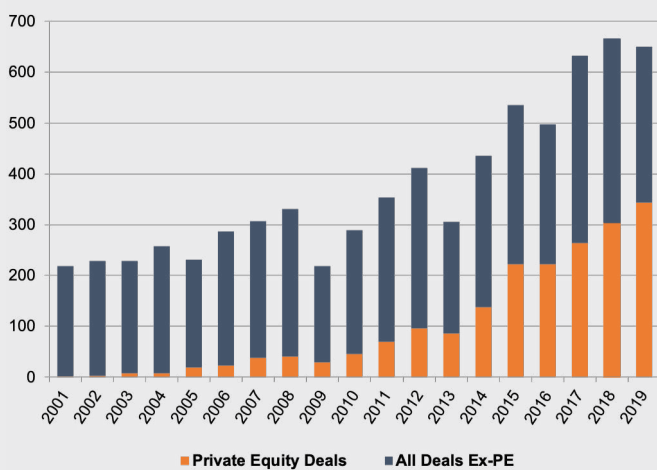
Figure 1: Median Public Enterprise Value / EBITDA Multiples



Source: S&P Global Market Intelligence, Mercer Capital analysis. Includes AON, AJG, BRO, MMC.

Pricing multiples from industry mergers and acquisitions (M&A) can also be applied to a subject company's revenue or EBITDA. This can provide a meaningful indication of value as it typically takes industry factors into account (or at least the market's perception of industry factors) far more directly than the asset-based approach or income approach. Given the large volume of transactions in the insurance brokerage industry (see Figure 2), the market transactions method will usually be considered.

Figure 2: Insurance Brokerage Transactions (2001 - 2019)



Source: S&P Global Market Intelligence (as of 5/22/2020) Includes US deals, completed company & asset transactions

However, the market-based approach is not a perfect method by any means. For example, industry M&A data may not provide for a direct consideration of specific company characteristics. What if a company is a market leader and operates in a prime geographic market? Since the market and the specific company are relatively more attractive than the average transaction, the appropriate pricing multiple for this company is likely above any median taken from a group of industry transactions. Some prospective buyers, particularly private equity firms, distinguish between platform agencies and bolt-on or fold-in targets. Pricing multiples for quality platform agencies can sometimes meet or exceed those observed for the public brokers. Clearly, the more comparable the transactions are, the more meaningful the indication of value will be, but caution must be exercised when using data from market transactions since the circumstances surrounding each sale are often unknown.

Income Approach

The income approach allows for the consideration of characteristics specific to the subject business, such as its level of risk and its growth prospects relative to the market. There are two common valuation methods under the income approach.

Under the first, called the single period capitalization of earnings method, the analyst estimates a base level of annual earnings and then applies a multiple to those earnings based on market returns. The second method is called the discounted cash flow method, in which the analyst develops a discrete projection of future revenue, expenses, and cash flow, and then discounts those cash flows to the present at an appropriate discount rate.

Is it as simple as a "1.5x revenue" rule of thumb for valuing an agency? A revenue-based multiple can be a good shorthand way of expressing value. But because it ignores the profitability of the agency, it is rarely the method that buyers with full information actually use. Most sophisticated buyers focus on pro forma EBITDA and margin rather than on top-line revenue. The goal of the income approach valuation is to determine what benefits the owner(s) will derive from the agency. When buyer and seller disagree on price or the level of "true" EBITDA, multi-year earn-out structures are often used to bridge the gap and align the interests of all parties to a deal.

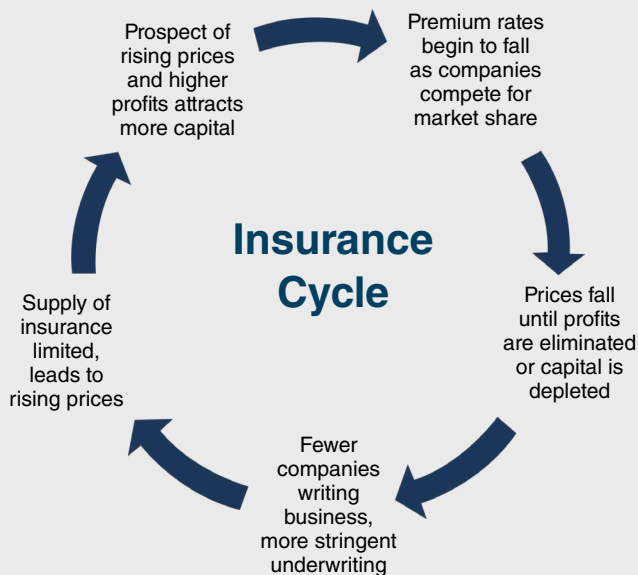
Value Drivers

Beyond the valuation basics, there are several value drivers for insurance agencies that need to be considered. A few of these items are discussed below.

State of the Market

The trajectory of agency revenue and earnings is influenced by the current position in the insurance cycle (see Figure 3), though not all products/services follow the same trends. As the insurance market hardens (and premium prices are rising), profitability is often enhanced in the short term, especially for renewals. On the other hand, softening markets (with falling premium prices) tend to cause revenues to slow or contract – and when combined with weak macroeconomic conditions, like rising unemployment, the negative effects can be exacerbated.

Figure 3: Insurance Cycle



M&A Environment

It is no secret that M&A activity in the agency space has been at record levels in recent years, both in terms of the number of transactions and the multiples being paid. But high multiples in an industry can cut both ways – higher multiples are obviously

good for selling agencies, but they make growth via acquisition more expensive for those that would like to purchase an agency. The rise of private equity as the predominant buyer of agencies in the industry has just pushed multiples higher across the board.

Growth and Margins

Agencies located in a fast-growing area or those with a unique industry and/or product niche can command premium valuation multiples. Exposure to certain types of business may also attract or repel certain buyers. The mix of carrier appointments can lead to new opportunities for a particular buyer or opportunities to consolidate business under a common carrier and qualify for more favorable commission and/or compensation arrangements. These things can lead to above-average EBITDA margins that can be highly accretive to a buyer.

The source of an agency's growth matters, too. For companies with an active acquisition strategy, it is important to measure revenue and earnings growth on an organic basis. Too much focus on top-line revenue growth can lead a firm to neglect its existing customer base and forgo valuable organic growth opportunities. Firms that rely too heavily on acquisition-based growth can find themselves slowing when the pipeline dries up or hampered by debt obligations from previous acquisitions.

Agency-Specific Factors

On an individual agency level, culture, leadership, and modernization matter. The average age of the typical owner/producer continues to increase and those agencies that have invested in training the next generation of producers and managers tend to stand out among their peers. Agencies that have invested in new technology (modern agency management systems, social media, web and mobile-friendly marketing, etc.) can further differentiate themselves from the competition.

In certain contexts, the high degree of personal interaction and long-standing relationships with customers can be indicative of personal goodwill for the key individuals and/or principals in an insurance agency. Accordingly, a consideration of personal goodwill might be warranted in certain transaction structures or in cases of marital dissolution in states that recognize personal goodwill as a non-marital asset.

Conclusion

The valuation of an insurance agency can be more complex than other types of businesses, and we've only scratched the surface with respect to the types of agencies, the acronyms, and the industry terminology. As in many industries, "rules-of-thumb" (be they some multiple of revenue or earnings, or other) are dangerous to rely on in any meaningful transaction. Such

"rules-of-thumb" fail to consider the specific characteristics of the business and as such, they often fail to deliver insightful indications of value. A business owner or trusted advisor that is considering a transaction or planning an ownership transition can become more confident in the decisions being made with the benefit of a sound agency valuation.

For more information or to discuss a potential valuation engagement in confidence, please contact us.

Insurance Valuation Team



Lucas Parris, CFA, ASA-BV/IA
parrisl@mercercapital.com
901.322.9784



Donald Erickson, ASA
ericksond@mercercapital.com
214.468.8404



Bryce Erickson, ASA, MRICS
ericksonb@mercercapital.com
214.468.8411



Travis W. Harms, CFA, CPA/ABV
harmst@mercercapital.com
901.322.9760