



MERCER CAPITAL'S

# Value Matters™

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## Good Things Come to Those Who Don't Wait

Having been retained for a number of significant litigation engagements over the years, Mercer Capital has had the opportunity to observe a variety of theories on the best time for attorneys to retain experts for their lawsuits.

In many lawsuits, the testimony of your business valuation, economic damages, or investment banking expert will be among the more important elements of your case, making it vital that the expert be involved early in the process. However, some attorneys tend to wait until the last minute to hire their experts, ostensibly under the theory that hiring experts late in the game minimizes the overall expense of the case. After all, the thinking goes, if the experts are not hired until it is certain that their expert reports will be needed, then the looming deadline provides an automatic limit to the number of hours that can be billed.

This approach is flawed for a number of reasons. In our experience, it is far better to involve the experts early. The sooner your business valuation, economic damages, or investment banking expert is involved, the sooner the expert will be able to provide you with an economic perspective on the facts of your case or your theory of damages. The longer you wait, the later your expert will be able to provide economic insight, good or bad, and the less time you will have to address any issues raised by your expert.

As an example of the above, Mercer Capital was contacted by an attorney concerning a significant breach of contract case involving a warehouse and distribution business whose business had been damaged when a key supplier cancelled a supply contract. The lawsuit was very well developed by the time we were contacted, and detailed pleadings existed concerning the mechanism by which the plaintiff's business was damaged and the results of the defendant's actions. The result of the case as presented to us was that, aside from some distraction and aggravation on the part of the plaintiff, a big piece of the case was essentially a wash, with very little economic damages. It would have been beneficial to the plaintiff's lawyer to have known much earlier in the process that the damaged part of the operation was essentially breaking even (at best) prior to the breach of contract, and that there were few fixed costs that continued after the breach. The bottom line is that our estimate of damages was far lower than anticipated by either the plaintiff or his attorney.

In addition to the advantages associated with gaining perspective described above, hiring your expert early provides the following advantages:

1. Your expert can help you understand financial and economic concepts that are relevant to the dispute at hand. There are words and concepts that have particular meanings in a legal context that are unfamiliar or even surprising to non-attorneys. Similarly, there are certain elements of finance, accounting, and economics that might surprise those who do not work in these areas.
2. Your expert can help you figure out the discovery and documentation requirements associated with your case. This can help you give your client a better understanding of the overall cost of the lawsuit in terms of time, legal fees, and possible accounting, forensic accounting, or other services that might be required.

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*New from Mercer Capital  
The Buy-Sell Agreement  
Resource Kit*

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# Business Valuation

An Integrated Theory,  
Second Edition

Z. Christopher Mercer, ASA, CFA  
and  
Travis W. Harms, CFA, CPA/ABV

Whether you are an accountant, auditor, financial planner, or attorney, *Business Valuation: An Integrated Theory, Second Edition* enables you to understand and correctly apply fundamental valuation concepts.

Thoroughly revised and expanded, the *Second Edition* demystifies modern valuation theory, bringing together various valuation concepts to reveal a comprehensive picture of business valuation.

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3. Your expert can consult with you about economic and financial matters, helping you create a theory of damages that is relevant and calculable. In economic damages cases in particular, it is important that the facts and the law align in such a way that an economic damages expert can provide an opinion that is consistent with the remedies the law allows.
4. Time allows organization and familiarity with the underlying facts and documents of the case. The more organized your experts, the better able they will be to get command of all the information in the case relevant to their opinions, and the less likely they will be to be surprised by key documents that may appear to undermine their opinions.
5. Hiring experts early provides additional time to prepare for deposition and trial, which will allow for more effective testimony. Your experts can help you create more effective direct examinations and cross examinations of opposing experts if they have the time to do so.
6. Experts may be able to supply deposition questions for opposing experts and fact witnesses. In some cases, Mercer Capital has provided literally hundreds of questions for opposing expert and fact witnesses that greatly clarified the underlying economic and financial facts of the case. Better depositions of experts enhance the potential for settlement, and better depositions of your experts compared to the other side's experts enhance your negotiating position. It has been our experience that many cases settle shortly after expert depositions, and we have seen at least a few where another expert completely torpedoed a case.
7. As the case progresses, your expert can vet the work of experts on the other side.
8. Hiring an expert early allows your reports to be prepared at lower effective billing rates. Reports prepared in the normal course of business benefit from data entry and basic analytical functions being performed by professionals with lower billing rates than your expert. If a report is prepared at the last minute, it must typically be prepared almost exclusively by (rather than under the supervision of) higher-rate personnel.
9. The sooner "the team" on the litigation is complete, the better they will work together. This is not to imply that your expert is anything but independent, but rather to point out that the familiarity that comes from working together over the course of an engagement will enhance the communication and rapport between attorney and expert.
10. If you hire your experts early, you generally get a better product. Being hired early allows your expert time to prepare a report, reflect on that report, and then issue a final report. It minimizes the potential for mistakes and last minute changes to the final report, and it also allows your expert to issue a more complete, more cohesive, and better written expert report.

As you can see, hiring your experts early in the process allows the experts to do a better job forming and documenting their opinions, and informing you and the court. While it may seem to be a greater financial commitment from your client, waiting until the last minute could prove to be much more costly. Simply put, the early dollars spent on your valuation, economic, or investment banking expert may be the best dollars. Good things come to those who don't wait.



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## MERCER CAPITAL'S LITIGATION SUPPORT SERVICES

Mercer Capital brings analytical resources and over 25 years of experience to the field of dispute analysis and litigation support. Our professionals have been designated as expert witnesses in federal and state courts and before various regulatory bodies. Call us at 800.769.0967 to discuss your needs in confidence.

Listed below is a representative sample of Mercer Capital's dispute analysis services.

- » Business damages
- » Lost profits analyses
- » Contract disputes
- » Buy - sell agreements
- » Establish valuation mechanisms
- » Resolve valuation disputes
- » Multiple appraiser exercises
- » Securities fraud analyses
- » Family law and marital dissolution
- » Valuation of closely held or publicly traded securities
- » Joint retention of single appraiser
- » Blockage analyses
- » "Fair value" controversies under various state laws
- » Dissenting shareholders
- » Tax-related controversies
- » Gift and estate taxes
- » Corporate tax matters
- » ESOP matters and other ERISA-related disputes involving valuation issues
- » Mediation or arbitration of other valuation-related disputes
- » Review of expert reports for potential rebuttal testimony or cross examination
- » Analysis of complex business issues from a valuation perspective
- » Bankruptcy and corporate reorganization issues
- » Fraudulent conveyance issues
- » M&A advisory-related engagements

## CLIENTS SERVED

Mercer Capital has been engaged by some of the premier professional firms in the country. Below is a list of the types of clients we represent.

- » National, regional, and local law firms and their public and private clients
- » Internal Revenue Service
- » Federal Deposit Insurance Corporation
- » Resolution Trust Corporation
- » Department of Labor
- » Department of Justice
- » Trust Departments of Financial Institutions

## TESTIMONY EXPERIENCE

Our experts have testified before numerous courts including:

- » U.S. Federal District Court (Several Jurisdictions)
- » County and State Courts (Numerous States)
- » U.S. Tax Court
- » U.S. Bankruptcy Court
- » State Regulatory Bodies
- » American Arbitration Association

## MERCER'S PROFESSIONALS ARE HERE TO HELP YOU

The professionals of Mercer Capital have a great deal of experience speaking to industry and professional groups across the nation on topics such as:

- » Buy-Sell Agreements
- » The Integrated Theory of Business Valuation
- » Is Your Business Ready for Sale?<sup>TM</sup>
- » Purchase Price Allocation
- » Valuation of Employee Stock Options
- » Litigation Support and Expert Testimony
- » Valuation of Privately Held Businesses, Partnerships, or LLCs
- » Financial Institution Valuation
- » ESOP Valuation

**To book a Mercer Capital professional as a speaker at your next conference or CLE/CPE meeting, please contact Barbara Walters Price at [priceb@mercercapital.com](mailto:priceb@mercercapital.com).**

## MERCER CAPITAL'S E-BOOK LIBRARY

TITLE	DESCRIPTION	INVESTMENT	RELEASE DATE
<b>Valuing Shareholder Cash Flows: Quantifying Marketability Discounts</b>	Quantifying Marketability Discounts has been updated and is now offered as an e-book. Titled <i>Valuing Shareholder Cash Flows: Quantifying Marketability Discounts - 2005 E-Book</i> , this edition provides a brand new chapter which discusses each of the five assumptions of the QMDM in depth. As a bonus, when you purchase the e-book, you will also receive the <i>QMDM Companion</i> , the latest edition of the Quantitative Marketability Discount Model, in spreadsheet format.	<b>\$95.00</b>	<i>Currently Available</i>
<b>Valuing Financial Institutions</b>	We are responding to requests to put this 1992 book back into print and we are doing so as an E-Book	<b>\$65.00</b>	<i>Currently Available</i>
<b>Are S Corporations Worth More Than C Corporations?</b>	An e-booklet that adds to the S Corp vs. C Corp debate	<b>\$19.95</b>	<i>Currently Available</i>
<b>Embedded Capital Gains</b>	A closer look at the Embedded Capital Gains issue.	<b>\$19.95</b>	<i>Currently Available</i>
<b>Rate &amp; Flow: An Alternative Approach to Determining Active/Passive Appreciation in Marital Dissolutions</b>	In this e-book, we present an alternative model for determining active / passive appreciation in a marital dissolution. In states where an owner/spouse's active management of a business does not preclude the consideration of passive appreciation, we offer a fresh approach based on rate and flow analysis	<b>Complimentary</b>	<i>Currently Available</i>
<b>QMDM Fact Sheet</b>	The latest information about the QMDM in a pdf format	<b>Complimentary</b>	<i>Currently Available</i>

Visit our website at [www.mercercapital.com](http://www.mercercapital.com) for more information or to download an e-book.

## NEW WHITEPAPER SERIES: "UNDERSTAND THE VALUE OF ..."

TITLE	DESCRIPTION	INVESTMENT	RELEASE DATE
<b>Understand the Value of Your Independent Trust Company</b>	Due to their variance in size, there is no one-size-fits-all definition of an independent trust company, and recognition of the particular attributes of independent trust companies is significant to understanding their value.	<b>Complimentary</b>	<i>Currently Available</i>
<b>Understand the Value of Your Truck Dealership</b>	Contrary to popular belief, not all truck dealers are worth book value. This article provides useful information as to how truck dealers are valued and what impact that might have on their owners.	<b>Complimentary</b>	<i>Currently Available</i>
<b>Understand the Value of Your Brick Business</b>	This article provides an informative overview regarding the valuation of businesses operating in the brick industry, including a discussion of value as it relates generally to both manufacturers and wholesalers, as understanding how brick businesses are valued may help you understand how to grow the value of your business.	<b>Complimentary</b>	<i>Currently Available</i>
<b>Understand the Value of Your Insurance Brokerage</b>	For the past several years, insurance brokerages have been in a period of consolidation, and the current soft market is expected to persist for at least the near term. As such, it is an opportune time for business owners to have an idea of what their brokerage business is worth.	<b>Complimentary</b>	<i>Currently Available</i>
<b>Understand the Value of Your Physician Practice</b>	The event that triggers ownership transfer can be categorized as either voluntary or involuntary. It is important for physicians to consider the universe of ownership transfer possibilities, because sooner or later, you will be involved.	<b>Complimentary</b>	<i>Currently Available</i>
<b>Understand the Value of Your Auto Dealership</b>	Because your dealership will change hands, it is important for you to understand the key concepts of business value and how value is determined for your dealership.	<b>Complimentary</b>	<i>Currently Available</i>
<b>Understand the Value of Your Wholesale Distributorship of Malt Beverage Products</b>	The financial landscape is littered with rules of thumb pertaining to the value of privately owned businesses. Perhaps in no other industry is the rule of thumb concept more prevalent than in beer distribution. It is critical that value be determined and articulated in a credible fashion.	<b>Complimentary</b>	<i>Currently Available</i>

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**MERCER CAPITAL** is a business valuation and investment banking firm serving a national and international clientele. Our reputation for excellence is based on an ability to solve complex financial problems expeditiously. We convert over 20 years of experience, including thousands of assignments, into solutions for the issues of today.

**Corporate Valuation.** Mercer Capital provides a broad range of independent valuation and financial advisory services, including:

- » Dispute Analysis Services and Expert Testimony
- » Valuation of Employee Options
- » Valuation for Corporate Tax Matters
- » Goodwill Impairment Testing
- » Valuation for Corporate Income Tax Issues
- » Valuation of Intangible Assets
- » Valuation for ESOPs
- » Fairness Opinions
- » Purchase Price Allocations

**Investment Banking.** Mercer Capital's investment banking division specializes in providing merger and acquisition services to sellers or buyers of private businesses or public companies divesting divisions and subsidiaries. In addition, we assist clients in industry consolidations, roll ups, and refinancings.

## INTERNET COMMERCE: OBTAIN PROPOSALS TO VALUE YOUR COMPANY, BANK, FLP OR LLC VIA OUR WEBSITE

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Many of your colleagues have already used our PROPOSAL REQUEST FORMS and are impressed by the decrease in transactional overhead and the increased ease in obtaining actionable proposals for their clients. We are pleased to be doing business with them. Try it yourself! Visit our website and provide us with the pertinent information via this form, and we'll prepare a proposal and deliver it to you via e-mail, fax or USPS. Complete confidentiality is assured.

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Business Valuation » Investment Banking

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Estate planning professionals must have this resource kit. It is an invaluable aid as you draft and review buy-sell agreements. Authored by a valuation professional, the book and the *Buy-Sell Audit Checklist* can help you avoid the problems and pitfalls of poorly worded or incomplete agreements.

Name

Firm

Address

City/State/Zip Telephone

Email

Visa  Mastercard  American Express  Check Enclosed

Card Number

Name on Card Exp. Date

Signature

	ITEM	REG. PRICE	SPECIAL PRICE	TOTAL
	<b>Buy-Sell Agreement Resource Kit</b> <i>(Includes Book &amp; Checklist)</i>	<del>\$129</del>	<b>\$79</b>	

### Individual Item Orders

	Buy-Sell Agreements: The Book	\$79		
	Buy-Sell Audit Checklist	\$50		

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