

# Financial Valuation *and* Litigation Expert

IEWS AND TOOLS FROM LEADING EXPERTS ON VALUATION, FORENSIC/FRAUD AND LITIGATION SERVICES



## Editor's Outlook

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I hope you're enjoying these sultry days of summer and taking an opportunity to slow down and relax a little. We're bringing you some great articles in this issue, so pull up a beach chair and dig in!

Our front-page article focuses on company websites. We've taken a look at quite a few from within our profession, and there's some concern over what we found. We hope you'll read the article, understand our concerns, and examine your own website to determine if it needs some revamping.

Next, Roger Grabowski of Duff & Phelps explains his study of the long-term historical equity risk premium and tells you why he believes it is too high. He also details how to use the Duff & Phelps Risk Premium Report when the ERP estimate differs from historic realized returns.

Next, Nancy Fannon, who's recently published *The Effect of Tax Policy on Value in the Private Capital Markets*, talks about pass-through entity adjustments and a new consideration in their application to the market return.

Scott Saltzman takes us for a walk down memory lane as he summarizes some of the major events affecting the financial market. He concludes that fair value accounting has

*Continued on next page*

# WEBSITES: Uninteresting, Unsupportable, and Unsafe?

"Expert Witnesses often have someone from their marketing department design their website or hire someone to design it for them, without taking the time to review what they have written. Keep in mind that you are ultimately responsible for what is written and posted on your website. Do not let the marketing person 'fluff-up' your credentials, as your website is often the first place opposing counsel will go to dig up dirt on you." This is from SEAK, Inc., an organization that provides training, seminars, publications and professional directories for expert witnesses.<sup>1</sup>

We thought that we would investigate this statement in regard to the business valuation and forensic consulting community. We perused quite a few websites and were amazed at what we saw. It seems that just

about everyone hired the same person to write the descriptive text! Furthermore, many contained the three big Us: Uninteresting, Unsupportable and possibly Unsafe.

Many of the websites say that their firms and services are "unique," "superior," and the "best." They hire the "best" and the "brightest," have "uncommon" professionalism, are market "leaders," are "widely" recognized, hold "distinguished" certifications, possess "unparalleled" expertise, and offer "exemplary" services. They are "recognized leaders," possess "extraordinary independence and judgment," have "distinguished" staff, are a "leading" firm, offering "world-class" services. They are "nationally recognized," offer "premier" services, and hold themselves to the "highest standard of excellence."

*Continued on page three*

## EXPERTS in this Issue

<b>Jim Hitchner</b> Editor's Outlook .....	1
<b>Roger Grabowski, Guest Columnist</b> on Equity Risk Premiums .....	5
<b>Nancy Fannon</b> on S Corporations .....	10
<b>Scott Saltzman</b> on Financial Reporting .....	13

<b>Ed Dupke</b> on the History of BV in the AICPA .....	15
<b>Steve Campana, Guest Columnist</b> on Probability Weighting in FLPs .....	18
<b>Panel of Experts</b> .....	23
<b>Cost of Capital Corner</b> .....	25

**UNINTERESTING**

Are you bored yet? This kind of language is definitely uninteresting. It “goes in one eye and out the other.” However, is it supportable? *Uninteresting* will not get you into trouble; *unsupportable* may. Also, if the language is unsupportable, then it may be unsafe (see previous SEAK quote), particularly if you offer litigation services. Let’s explore the three Us in more detail.

On page four, we present many of the above-used terms and their definitions from *Merriam-Webster’s Online Dictionary*. Some of the better ones are investigated in more detail below. Some firms said they were “unique.” Well, “unique” is defined as “being the only one” or “being without a like or equal.” If that is so, how can so many firms be “unique”?

Let’s move on. Another description is “unparalleled.” This is defined as “having no parallel” or “having no equal or match” or “unique in kind or quality.” Again, how can multiple firms be “unparalleled”? “World-class” is “being of the highest caliber in the world,” which is a *very* strong statement. “Premier” is defined as “first in position, rank, or importance.” How can so many firms be first?

**UNSUPPORTABLE**

Let’s talk about the second U: unsupportable. Are these types of descriptors supportable or unsupportable? Well, I guess each firm’s leaders can say that they truly believe their firm and services really are “unique,” “unparalleled,” “world-class” and “premier.” That can be the only explanation, since we know of no authoritative or regulatory body that grants such distinctions. There is no vote taken each year to determine who is first and at the top of the profession. These are obviously self-determined designations.

**UNSAFE**

Let’s move on to the third U: unsafe. We will use an example in a cross-examination voir dire setting. Ms. Attorney is trying to have Mr. Valdude,

the valuation analyst working with opposing counsel, disqualified as an expert witness.

**Attorney:** Mr. Valdude, do you believe that your services are without equal and that you are the only person in the U.S. who provides such quality services?

**Valdude:** I believe I am one of the best.

**Attorney:** I didn’t ask you that. I asked you if you are number one, without an equal, in the entire U.S.?

**Valdude:** No, I do not believe that. As I just said, I do believe I am one of the best.

**Attorney:** Here is a copy of the *Merriam-Webster Dictionary*. Do you recognize this dictionary as one of the most well known?

**Valdude:** Yes.

**Attorney:** Please read the definition of “unique.”

**Valdude:** “the only one; being without a like or equal.”

**Attorney:** Given that definition of “unique,” and your prior testimony, do you believe that you and your services are “unique”?

**Valdude:** No.

**Attorney:** Please read the following description of you, your firm and its services that I downloaded from your website. [Attorney hands Valdude a copy.]

**Valdude:** “John Valdude and Valdude and Associates, LLC are nationally recognized for their unique expertise in business valuation and forensic services.”

**Attorney:** Mr. Valdude, do you agree with that statement?

**Valdude:** I guess not. However, I didn’t write that. Someone in my firm wrote it.

**Attorney:** Did you know that sentence was on your website?

**Valdude:** Yes. [Sheepishly looking down.]

**Attorney:** Do you believe that you and your firm are nationally recognized?

**Valdude:** Yes.

**Attorney:** What authoritative group or organization determined that you and your firm are nationally recognized?

**Valdude:** No one. I determined that. It’s just well known.

**Attorney:** How many people have you polled to gather that data?

**Valdude:** I didn’t poll anyone. It’s just well known.

**Attorney:** Are you telling this court that the reason that you and your firm are nationally recognized is because you say it is?

**Valdude:** Yes.

**Attorney:** You have no concrete proof do you?

**Valdude:** No.

**Attorney:** Please read the following description of you and your firm concerning independence that I copied from your website. [Attorney hands Valdude a copy.]

**Valdude:** “John Valdude and Valdude and Associates, LLC possess extraordinary independence.”

**Attorney:** Mr. Valdude, do you agree with that statement?

**Valdude:** Yes, absolutely. [Valdude

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proudly sits straight with a slight sneer, thinking the attorney has now made a mistake].

**Attorney:** Please read the definition of extraordinary from the *Merriam Webster Dictionary*.

**Valdude:** "going beyond what is usual, regular, or customary; exceptional to a very marked extent."

**Attorney:** Do you possess extraordinary independence versus just ordinary independence?

**Valdude:** Yes, if you put it that way, yes.

**Attorney:** So you are more independent than all your peers, correct?

**Valdude:** I don't know what you mean. [Valdude is confused].

**Attorney:** If you are extraordinary, that means that everyone else is just plain ordinary, correct?

**Valdude:** Yes, I guess so.

**Attorney:** I don't want you to guess. Are you more extraordinary than your ordinary peers?

**Valdude:** Yes.

**Attorney:** By what metric or benchmark do you know you possess extraordinary independence?

**Valdude:** I just know it. I am very careful to be very independent and unbiased.

**Attorney:** That's not what I asked you. By what metric or benchmark do you know you possess extraordinary independence?

**Valdude:** It's just something I know.

**Attorney:** With no real concrete evidence or support, correct?

**Valdude:** I guess not. The only evidence is I know how I conduct my analyses.

**Attorney:** So you have self-designated yourself as being extraordinary?

**Valdude:** Yes.

**Attorney:** Here is a full copy of the pages on your website. Please read this carefully and tell me if there are any other untruths or unsupportable statements? [Note: There are.]

We won't belabor the point here. We can use several more of the descriptors already presented and go through a similar cross-examination. We think you get the point, sharply.

**CONCLUSION**

On a positive note, we also found several websites that do not use such puffed up language. They would say something like the following:

- We provide quality services.
- We provide services in complex matters.
- Several of our firm's directors are in leadership roles with various professional organizations.
- We have a great deal of experience.
- Several of our staff have written books and articles.

Many websites were very well done. However, many more [based on our unscientific sample] were very similar and used some flattering adjectives and adverbs. Sorry, we have to go now. We have to check our own websites to make sure we aren't uninteresting, unsupportable and unsafe. ☹

**Dictionary Definitions**

Definitions are taken from Merriam-Webster's Online Dictionary <http://www.aolsvc.merriam-webster.aol.com/dictionary>

**UNIQUE** - being the only one; being without a like or equal; unusual

**SUPERIOR** - situated higher up; upper; of higher rank, quality or importance; courageously or serenely indifferent; greater in quantity or numbers; excellent of its kind; better; being a superscript; more comprehensive; affecting or assuming an air of superiority

**BEST** - excelling all others; most productive of good; offering or producing the greatest advantage, utility, or satisfaction

**BRIGHTEST** - illustrious; glorious

**UNCOMMON** - not ordinarily encountered; unusual; remarkable; exceptional

**LEADER** - a person who has commanding authority or influence

**EXEMPLARY** - serving as a pattern; deserving imitation; commendable

**RECOGNIZED** - to acknowledge formally; to admit as being of a particular status; to admit as being one entitled to be heard; to acknowledge or take notice of in some definite way; to perceive to be something or someone previously known

**DISTINGUISHED** - marked by eminence, distinction, or excellence; befitting an eminent person

**UNPARALLELED** - having no parallel; having no equal or match; unique in kind or quality

**EXTRAORDINARY** - going beyond what is usual, regular, or customary; exceptional to a very marked extent

**LEADING** - coming or ranking first : foremost; exercising leadership; providing direction or guidance; given most prominent display

**WORLD-CLASS** - being of the highest caliber in the world

**NATIONAL** - of or relating to a nation; nationalist; comprising or characteristic of a nationality; belonging to or maintained by the federal government; of, relating to, or being a coalition government formed by most or all major political parties usually in a crisis

**PREMIER** - first in position, rank, or importance; first in time; earliest

**HIGHEST** - of greater degree, amount, cost, value, or content than average, usual, or expected; of relatively great importance; intellectually or artistically of the first order

**EXCELLENCE** - the quality of being excellent

**EXCELLENT** - superior; very good of its kind; eminently good; first-class