

Alert dated June 11, 2009

Dan. E. Gremillion MD v. Nashville Gastrointestinal Specialists, Inc. Court of Appeals of Tennessee M2008-00061-COA-R3-CV filed April 20, 2009

This shareholder dispute action, filed under state law, has all the drama and the extreme positions consistent by a plaintiff who wanted both a low valuation of his 1/4 interest for divorce purposes, and subsequently a high valuation upon his retirement from the practice. The earlier divorce valuation, was of course only a red herring in this corporate appraisal action; the analyst responsible for that valuation had taken into account the rather simple buy-sell formula, but also other factors such as potential sale to other doctors based on what the practice actually was worth [In this state, the FMV standard applies to marital dissolutions, but goodwill in professional corporations is specifically excluded from the marital assets.]

The buy-sell formula was worded as follows: "the stock value will be the number obtained by taking the total accounts receivables; multiplying by 65% and dividing by the total number of stockholders; plus the number equal to the *book value of the corporate assets* divided by the total number of stockholders." The drafters - apparently the doctors themselves - should have taken BV or accounting advice, but clearly did not.

In order to achieve the highest number in the shareholder litigation, the plaintiff and his advisers interpreted the governing buy-sell agreement as actually eliminating liabilities from the net worth calculation. The trial court did not have an easy time of this, but eventually gave the doctor what he wanted, i.e. the Court calculated book value without regard to liabilities.

Never mind that, after one or perhaps two shareholders were to take such cash-out as interpreted by Dr. Gremillion, the remaining shareholders would be left with an insolvent entity since, like many professional corporations, this one's net book value was negligible. Following the extensive posturing in Court, it thus took a round trip to the appeals court to establish what only makes sense, i.e. if the shareholders had agreed to take a cash-out at book value, it only served the interest of the first ones to be cashed out to interpret the poorly drafted agreement as not requiring liabilities to be deducted from assets. Of course, the shareholders perhaps would have been served better by requiring a cash-out a fair market value including goodwill, if any.

The decision is at <http://NYNJCT-BV.com/Gremillion.pdf>. Please do not hesitate to call or e-mail to discuss this or any other valuation issue.

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