

CONFIDENTIAL ATTORNEY WORK PRODUCT

Deposition Summary
of
James Iverson
Taken July 14, 2004
In the matter of The West Family Trust
Case No.: 444444

Page:Line

Summarized Testimony of James Iverson

EXAMINATION BY MR. HEARD

Education

4:10 8:4 Iverson gained a bachelor's degree with honors and distinction in economics from Stanford in 1970 and an MBA from Yale in 1974. He is designated as a Chartered Financial Analyst.

Employment

8:5 9:24 Iverson worked for a consulting firm for about three years from 1975-1978. The work involved operations-oriented management consulting focusing on project implementation in high-technology companies. For the next ten years, up to about 1989, he taught business at the University of International Business and Economics in Sydney, Australia. For one year after that he did investment research and made stock recommendations for the ABCD Corporation in New York City. In 1991 he was co-founder of Investor Opinions and is still one of the principals of the company.

Investor Opinions

9:25 11:23 Investor Opinions does business valuations, family partnership discount work and real estate appraisal. These are done for a wide variety of purposes including estate, gift and income taxes, transactions, financial reporting, and employee stock ownership plans. Iverson himself focuses on business valuations, and has done so since 1991. He recalls doing one business valuation prior to starting Investor Opinions. He had done approximately 150 business valuations between the time he started Investor Opinions and the time he performed services for West Enterprises.

Three valuations of West Enterprises

11:24 13:6 Iverson has reviewed his files before deposition. West Enterprises was a major client of Investor Opinions. Prior to valuing West Enterprises in consideration of a possible sale to its management, Investor Opinions had carried out two earlier valuation of West Enterprises. These were in late 1998 or in 1999.

13:7 16:3 **Valuation of West Enterprises for estate tax**
Iverson recalls discussion about the valuation of West Enterprises for estate tax return purposes. A low valuation helps reduce the estate taxes. A higher value has tax benefits if there is a subsequent sale. Both factors were in play at the time of this valuation because a subsequent sale was expected. At some point the client decided that the higher valuation would be more beneficial. These considerations do not affect the actual valuation put on the company, but the appraiser usually finds it helpful to know whether the client is looking for a higher or a lower valuation. It helps to understand the client's perspective because "potentially they could give you biased information." In connection with this valuation, the client's perspective did not affect the valuation opinion given by Iverson. He does recall some discussion at a late stage as to whether the value could be adjusted upwards. He does not recall making any changes. If there had been any changes, they would not have been made because of the client's concerns.

16:4 17:25 **Valuation of West Enterprises re management buyout**
There had been initial discussion prior to Investor Opinions being hired to evaluate West Enterprises in connection with a possible management buyout. Iverson does not recall who first contacted him. In outline, Jerry West had received an offer of some \$60 million for the company and wanted to know the actual value of the company; whereas in earlier valuations there might have been a desire for a higher or lower valuation. There was discussion as to whether they wanted a fairness opinion or a fair-market-value opinion, and it was decided to go for a fair-market-value opinion.

18:1 19:1 **Fiduciary responsibility of Rudy LaRusso**
Rudy LaRusso was particularly concerned to get an accurate valuation of the company because he acted as trustee for the trust that held half the stock and he therefore had a fiduciary responsibility to the beneficiaries.

19:2 20:18 **Fairness opinion versus a fair market value opinion**
A fair market value opinion is a straightforward opinion of the actual value. A fairness opinion is an opinion as to whether a transaction is fair, without putting an actual value on the elements of the transaction. For example, it might be possible to say that the consideration being offered by the management was fair without stating that the consideration was worth X dollars, or was worth between Y and Z dollars. Valuation analyses are used, but no actual valuation is given. Additionally, a fairness opinion involves the appraiser in the greater responsibility of warranting that a transaction is fair, as opposed to simply stating the market value of one element in the transaction.

20:19 22:16 **Reasons for requesting a fair-market-value opinion**
Iverson had supplied fee estimates for supplying the two types of valuation. It is reasonable to suppose that the lower fee for a fair-market-value opinion played some part in the decision to select that option. He recalls some discussion about the matter but does not recall the precise reason for the choice. A fairness opinion requires more hours of work but could probably be completed within the same overall time frame. The fairness evaluation can be complicated by fluctuations in the value of an offer. An evaluation is valid at a given price under given terms - if these change, the evaluation is no longer valid and would need to be updated.

22:17 24:5 **Exhibit 1: Management offer worth \$60 million**
This exhibit is a letter of intent dated January 25, 1999. It is represented to Iverson that this document came from the Investor Opinions files and is the only document that mentions the value of the management offer as being \$60 million. Iverson recalls receiving the document at some stage but is not certain whether it was before or after Investor Opinions was hired. He agrees the document is consistent with his own recollection that the management offer was worth \$60 million.

24:6 28:13 **Exhibit 2: Decision as to which opinion option to select**
The exhibit is the engagement letter and related materials sent by Investor Opinions under cover letter. Iverson does not recall whether the engagement letter was sent out after Investor Opinions had been selected or was sent when Investor Opinions was under consideration. The wording of the cover letter suggests that Investor Opinions had already been selected but Iverson explains that the wording is not conclusive because he sometimes uses language that is more positive than the situation might objectively warrant. Iverson agrees that, as the letter suggests, work could proceed on a fair-market-price evaluation with the option of incorporating a fairness evaluation as work progressed. There would be an additional fee that would effectively double the cost of the evaluation. The letter suggests updating the earlier evaluation of West Enterprises and doing a fairness evaluation later if required. It was not Investor Opinions' decision as to whether a fairness evaluation was required, although there may have been some input into the decision. For example, if the evaluation indicated a valuation range and the offer came in near the top of that range, Iverson would certainly indicate to the client that the offer was a fair offer. Similarly, if the offer looked very far from being fair, Iverson would share this opinion with the client to help them decide whether it might make sense to do a fairness opinion.

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