

## VALUATION FIGHTS

### Expert Reports

The Court must evaluate (competing) Expert Reports to determine whether each expert properly and reliably applied generally accepted valuation methodologies. The Supreme Court has directed that in undertaking such an analysis, courts should focus upon the prospective earning capacity of the reorganized debtor. See *Consol. Rock Prods. Co. v. Du Bois*, 312 U.S. 510, 526 (1941). Additionally, the estimation:

"must be based on an informed judgment which embraces all facts relevant to future earning capacity and hence to present worth, including, of course, the nature and condition of the properties, the past earnings record, and all circumstances which indicate whether or not that record is a reliable criterion of future performance."

Courts generally rely upon expert opinion using some combination of the following three valuation methodologies that focus upon earnings capacity:

Comparable company analysis  
Precedent transactions analysis  
Discounted cash flow analysis

See *In re Nellson Neutr. Inc.*, No. 06-10072 (CSS), 2007 WL 201134 (Bankr. D. Del. Jan. 18, 2007) and see also *In re Granite Broad. Corp.*, 369 B.R. 120, 141 (Bankr. S.D.N.Y. 2007)

Once the court has determined that an expert is utilizing an accepted valuation methodology, it must then examine whether the expert applied the methodology correctly. The court must determine whether the "inputs" and assumptions selected by the expert are sound, supported by evidence and applied in a manner consistent with the applicable valuation methodology. See *In re Mirant Corp.*, 334 B.R. 800, 838 n. 134 (Bankr. N.D. Tex. 2005).