Forefront

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Partner and Managing Director

Ms. Koss specializes in litigation support, business valuation and forensic accounting services. Her knowledge and experience in litigation support includes breach of contract, lost profits, economic damages, and fraudulent conveyance matters. She has also performed numerous business valuations utilized in estate tax resolution, shareholder disputes, marital dissolution, and merger and acquisition transactions. Additionally, Ms. Koss has prepared complex financial analyses utilized in business turnarounds and bank workout assignments for clients.

Russell Long, CPA/ABV/CFF

Partner and Managing Director

Mr. Long specializes in litigation support, business valuation, turnaround consulting and receiverships. Mr. Long is also responsible for leading forensic accounting teams in the investigation of "Ponzi" schemes and complex business matters. He has worked with the FBI, SEC and other law enforcement agencies providing investigative support including reconstructing the accounting records in a large west Michigan bankruptcy case resulting in a $25 million recovery. Mr. Long acts as a receiver for commercial & residential properties as well as operating businesses and is responsible for all aspects of the assignments including the disposition strategy.

Andrew Malec, Ph.D.

Partner and Managing Director

Dr. Malec is a recognized expert with over 15 years of experience in providing economic analysis, valuation opinions, and litigation advisory services to litigators in complex, commercial matters. He has demonstrated experience in matters including, but not limited to, shareholder disputes, intellectual property, breach of contract, and securities litigation. Dr. Malec has significant testimony experience and has testified in state and federal courts, as well as in arbitration proceedings.

Mike Deighan, JD

Managing Director

Mr. Deighan is a 30-year veteran of the bankruptcy and restructuring industry. He has worked as an advisor in many of the largest bankruptcy cases in the automotive, retail, trucking, manufacturing, commercial financing, data center, equipment leasing and real estate industries including General Motors, Kmart and Comdisco. He has disposed of more than 350 million square feet of data center, industrial, multi-family, office, retail and warehouse properties over the course of his career.

Mr. Deighan specializes in advising stakeholders on restructurings, bankruptcies, dispositions and acquisitions with an expertise as a real estate strategist. He has worked as a court-appointed receiver in a number of operating and real estate cases.

PLANNING FOR A BUSINESS SALE

By Susan Koss

Selling a business is likely to be one of the most significant transactions a business owner will ever experience. However, many get so wrapped up in the day to day details of their business that they fail to plan ahead for its eventual sale. There are steps that can be taken in order to make the process run as efficiently as possible and to maximize value. These steps revolve around careful planning well in advance of listing the business for sale.

If you think about the process of selling a home, most homeowners know that in order to maximize value, the house must be in good saleable condition. What are buyers looking for in the applicable market? Have repairs and maintenance issues been handled sufficiently? Does the house have curb appeal? Is the house "show ready"? Is the house well organized? How does it compare to other houses for sale or recently sold in the neighborhood? Appropriate planning and foresight would require a homeowner to deal with such issues in advance of listing the house for sale in order to get it in the best condition to maximize the potential selling price.

The same is true of selling a business. By planning ahead for the eventual sale, a business owner can get the business in its finest condition to attract buyers and maximize value.

HERE ARE SOME IMPORTANT STEPS THE BUSINESS OWNER SHOULD ADDRESS IN THE PLANNING PROCESS:

IDENTIFY POTENTIAL BUYERS:

Planning for the eventual sale of a business begins by identifying the pool of potential buyers similar to the homeowner who first identifies what buyers are looking for in the applicable market. Identifying the potential purchaser may provide insight into what key issues or challenges may be present at the time of sale. Once the potential purchasers are identified, consideration must be given as to how those buyers would typically pay for the business. Planning ahead will leave more options for the sale of the business.

GET THE BUSINESS IN SALEABLE CONDITION:

A house that is well maintained and organized is appealing to the average buyer who wants move-in ready conditions. The same is true of most buyers of businesses. Buyers are purchasing the future of the business and its future cash flows. Therefore, it is important to have realistic and credible financial forecasts. The business owner should strategize to find ways to increase cash flow and profitability through operational efficiencies and cost reductions. Starting such initiatives early in the process will result in proven and stabilized improvements to profitability and other value indicators that are significant to potential buyers.

A clean set of books along with accurate and timely reporting practices is a requirement to get a business in saleable condition. An evaluation of the accounting practices and internal control procedures should be completed to see if improvements are needed. In addition, a business valuation should be performed to understand the drivers which impact value.

Business owners would be wise to utilize the services of professionals to handle legal, valuation, accounting, tax and transaction issues since these are generally areas outside of their expertise.

SCALE BACK THE ROLE OF THE BUSINESS OWNER:

The success of a business is commonly tied to the drive and determination of its founder. Any potential buyer is going to consider the impact of the loss of key employees, especially the owner. Therefore it is important for the owner to cultivate and develop key employees within the organization. The bottom line is that the more replaceable the business owner, the more valuable the business will become.

In conclusion, business owners should never lose sight of planning an exit strategy and should prepare for the sale of the company many years in advance. Similar to the homeowner who lists the house for sale without getting it in saleable condition first, disappointment likely awaits the business owner who does not plan ahead.

PRO$PERING IN AN UNCERTAIN MARKET

By Mike Deighan

In the first few weeks of 2016, O'Keefe conducted its 4th annual Middle Market Survey. This year our survey was sent out to over 3,000 business executives, bankers, accountants, attorneys and investment professionals.

The US economy has improved dramatically since our first survey in 2012. Domestic auto sales topped 17.4MM vehicles in 2015, and may hit 18MM in 2016. Oil prices have seen their steepest declines since the 90's costing 250,000 oil job losses. Stock prices have been erratic at best since the first of the year.

What does all of this mean? With such mixed signals, the question really comes down to whether the economy is still doing okay or is the ice cracking? Here are some of the results of our Middle Market Survey. And the fed rate still sits precariously near zero.

71% of respondents stated they met or exceeded their 2015 revenue projections unchanged from 2014. However, in 2013, 77% met their projections and in 2012 it was a whopping 84%. This is not moving in the right direction. Almost 75% of respondents who met or exceeded their revenue projections found their success from existing customers but they also rely on generating new customers for sales growth. New products and acquisitions remain less important to generating new business.

For those that did not meet their revenue projections for 2015, 57% saw a drop from existing customers up from 25% in 2014. Further, shortfalls from new customers fell from 80% in 2014 to 46% in 2015.

It appears that new customers are placing more orders and existing customers are cutting back.

Our next question asked which of 8 factors impact middle market companies the most. Our respondents found that healthcare costs remained the number one negative factor on profitability rising to 80% from 60% in 2015. The Domestic economy was the most positive factor on profitability with 70% of respondents saying it will have a positive or no effect on their business mirroring the 2015 survey. However, the global economy, global unrest and regulatory requirements continue to dog the profitability of middle market companies.

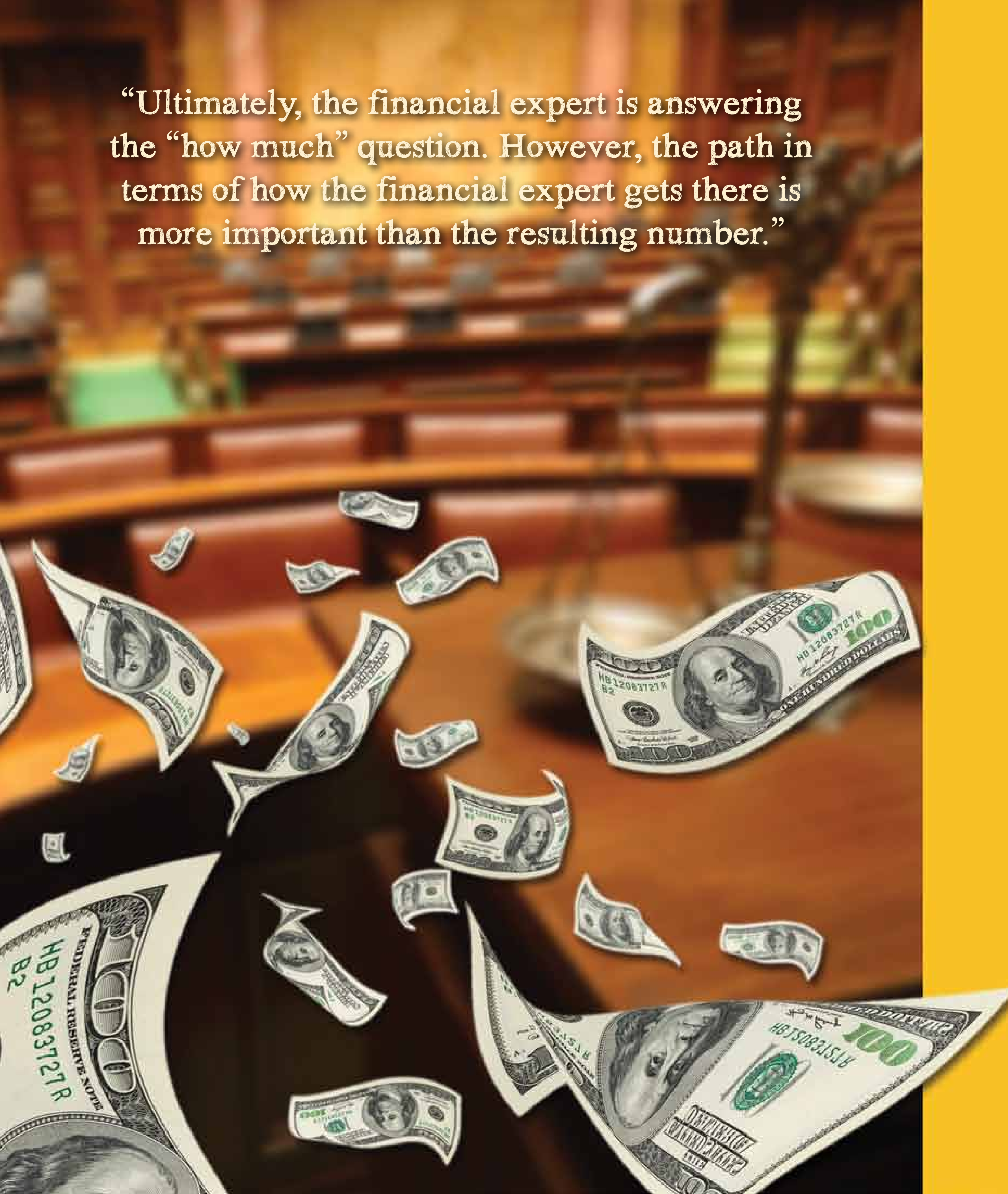
This year's survey found a more balanced number of factors that companies use as a barometer for the overall health of the middle market. The number one factor impacting profitability was the unemployment rate. However, that factor fell from 52% to 28% from last year. Among respondents, this was followed by GNP at 26% and auto production at 22%.

Capital spending continues to be strong and remains unchanged from the 2014-15 surveys. 61% of respondents predict an increase in capital expenditures. However back in 2013, only 16% of respondents felt that capital expenditures would increase. On the M & A front, the survey suggests that the M & A market remains active to very active with 90% saying it is active. In 2015 those numbers were 88% and in 2014 they were 74%. This appears to be a direct reflection on the strength of the auto industry.

When asked to rank the relative strength of 12 middle market industries, this year's respondents believe that each business sector will remain neutral or strong in 2016 with the auto industry leading the way at 79%. This is 10 points higher than 2015. Agriculture, healthcare and retail/dealers remain the weakest perceived sectors.

Although our respondents remain relatively upbeat on the middle market economy this year, there are chinks in the armor appearing. Job losses are continuing to mount in the oil sector. Retail is still struggling with more store closings and bankruptcy filings. And we have an election year the likes of which we have not seen in this country in over 100 years. 2016 is going to be an interesting year.

"Ultimately, the financial expert is answering the "how much" question. However, the path in terms of how the financial expert gets there is more important than the resulting number."



INTERPLAY

OF CASE MANAGEMENT EXPERT EFFECTIVENESS

By Andrew Malec, Ph.D.

Between attorney and expert fees, it is without question that a complex, commercial litigation matter can be expensive. Nevertheless, a thorough economic analysis is also required to support economic damages. As a result, the litigator is put in the position of managing his client's fee expectations and providing the expert with relevant information needed in order to ultimately render an opinion.

Seasoned litigators and financial experts know that the financial expert needs to have a thorough background of the case in order to opine on economic damages. This means understanding the scheduling order, reviewing interrogatories and requests for production of documents, reviewing answers to legal pleadings, reviewing deposition transcripts, and obtaining relevant financial data to analyze. Of course, more time spent by a financial expert on a litigation assignment will lead to increased expert fees. Nevertheless, not doing so may limit the expert's opinion or risk surprises in trial for which neither the litigator, the client, nor the financial expert desire. It is also beneficial for the financial expert to assist in discovery with document requests and deposition questions in order to obtain the relevant information to assist in his opinion of damages before discovery is closed.

Ultimately, the financial expert is answering the "how much" question. However, the path in terms of how the financial expert gets there is more important than the resulting number. The financial expert is not a "mouthpiece" or a "human calculator." The financial expert is an independent, skilled professional who uses his education, experience, and skill set to assist in quantifying economic damages. The financial expert needs to be able to defend his opinion in court. Not providing certain information to the financial expert in order to lower litigation fees may inadvertently limit the expert's opinion and not optimize receiving financial justice for the client.

Business Valuation

in a Divorce Proceeding

By Russell Long

Divorce proceedings and the judicial infrastructure that governs them are inherently complicated, particularly when one or both of the parties own a business. Insofar as the Family Court bench and the attorneys who appear before them are not experts in business valuation, the credibility of the valuation expert's testimony and supporting valuation report become the basis for a judge's decision regarding the value of a business interest. As such, it is essential the valuation expert get involved early to weigh all the options and prepare a credible independent valuation report to assist the trier of fact with the disposition of the marital estate. The valuation expert must not only have the right answer, but he or she must have the respect of the judiciary and be able to explain the conclusion in concise, understandable terms to an arbitrator, mediator, and or a jury.

The threshold consideration for any valuation expert is the selection of a standard of value appropriate to the pending divorce. It is well settled that the three most common standards are Fair Market Value, Fair Value, and Investment Value. The peculiarities of State case-law and sometimes even local practice can have a significant impact on the expectations of the valuation expert's audience. The attorney and the expert should agree on the standard of value prior to beginning the valuation, both mitigating ambiguity and strengthening negotiations. The valuation expert should be familiar with the case law in the jurisdiction of the divorce proceeding to ensure the standard of value chosen is consistent with similar cases and/or judicial expectations in the jurisdiction.

Fair Market Value, as defined in the Internal Revenue Service Ruling 59-60, quantifies the worth of a business by contemplating a hypothetical sale, a voluntary arm's length transaction with a willing buyer and a willing seller, under no obligation to act. This method also considers discounts for lack of control and lack of marketability for minority interests.

A second alternative is the Fair Value standard, the method most commonly utilized in shareholder disputes and minority shareholder oppression cases. Fair Value is quite similar to Fair Market Value, however, it does not require the valuator to consider discounts for lack of control or lack of marketability.

A third viable and frequently explored method is known as "Investment Value," or owner's value. Indeed, Shannon Pratt, a respected valuation expert and author, explored this method in his article titled What is Value, "in marital property divisions, only a few states strictly adhere to "Fair Market Value" as defined, many more states lean toward what the business appraisal community defines as Investment Value." In the context of a divorce, Investment Value represents the value of the interest in the owner's hands with no contemplation of a sale. Therefore, utilizing the Investment Value standard requires consideration of all the same elements listed in the Internal Revenue Service Ruling 59-60, it ignores discounts that would otherwise disproportionately benefit the business owning spouse.

Ultimately, the valuation expert must be able to assess the applicable facts and defend his decision to employ a particular valuation method over another. In large measure the success of any business valuation is governed by the independence of the valuator's opinion, which leaves it impervious to cross examination or other exploitation by the litigation process.

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Stormy Forecast

By Patrick O'Keefe
Founder and CEO

We have just finished hosting our 4th Annual Middle Market Forum which was attended in Troy and Grand Rapids by bankers, advisors, attorneys, and business owners. Special thanks to our partners President Pretty and Dr. Tim Nash from Northwood University who gave their economic prognostications for Michigan and the U.S. In addition, Steven Alexander – PNC, Steve Davis – Comerica, John Porterfield - PNC, and Art Gray – Comerica, shared their insights on new credit regulations and the vibrancy of the lending market.

The start to the new year has seen great volatility in the financial markets. Energy stays top of mind for distress in 2016. The phenomenon of our president reminding us how great things are with low unemployment and interest rates is somehow contradicted by the 74% of our 18-34 year olds who think the declared socialist candidate would be a good president. What ever happened to self-reliance and the pursuit of prosperity in the free market system? To say we live in interesting times would be an understatement.

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