DEPOSITION QUESTIONS FOR STEVEN GARCIA

When you see a box, it means that I am telling you either the direction that I want to go in or what I expect his answer to be.

BACKGROUND AND QUALIFICATIONS (BIOGRAPHICAL HISTORY)

At the date of the valuation, we know that he is a CPA, but I do not believe that he had obtained any credentials in business valuation.

1. When was your firm first retained to value the ESOP of THE BUSINESS?

2. Were you in charge of that assignment?

3. At the time that you took on that assignment, were you a Certified Business Appraiser designated by the Institute of Business Appraisers?

4. At the time that you took on that assignment, were you an Accredited Senior Appraiser designated by the American Society of Appraisers?

5. At the time that you took on that assignment, were you a Certified Valuation Analyst designated by the National Association of Certified Valuation Analysts?

6. At the time that you took on that assignment, did you hold a degree from any university or college in valuation sciences?

7. You are a Certified Public Accountant, is that correct?

8. And you are a member of the American Institute of Certified Public Accountants (“AICPA”), correct?

9. At the time that you took on that assignment, did the AICPA have a specialty designation in business valuation?

10. At the time that you took on that assignment, did you have any credentials that qualify you specifically in the field of business valuation?

11. At the time that you took on that assignment, what professional business valuation organizations did you belong to?

12. Did you belong to The Institute of Business Appraisers?

13. Did you belong to the American Society of Appraisers?

14. Did you belong to the National Association of Certified Valuation Analysts?

In Tab 1 (Paragraph 13/115.01 and .02) quoting from a publication that I authored for the AICPA, reference is made to the competency provision of the AICPA code of professional conduct, and the fact that in addition to financial statement analysis, proficiency is required in finance, economics, security analysis, and appraisal principles and methods. It also discusses that appropriate education is required, particularly courses sponsored by the AICPA, ASA, and IBA, are minimum requirements.

15. At the time that you took on that assignment, what business valuation courses had you attended? Who sponsored them, and when did you take them?

16. Who worked on this assignment with you from your firm?

17. What qualifications did they have at the time that you undertook this assignment?

18. What professional appraisal organizations did they belong to when your firm took on this assignment?

19. Turning to the page in your report entitled "Qualifications of Appraiser" at (CMB173), it indicates that your firm had been involved in the valuation of employee stock ownership plans. How many valuations of ESOPs had your firm done?

20. You also indicate at the bottom of that same page "Our reports are prepared in accordance with standards as promulgated by the American Institute of Certified Public Accountants." Is that correct?

21. What standards in particular are your reports in accordance with?

There were no business valuation standards issued by the AICPA at the time that this work was performed. There is 1 consulting services standard (see Tab 2) and there are the rules of professional conduct (see Tab 3)

22. What business valuation treatise or treatises did you rely on in the performance of this assignment?

There are several widely referenced books on business valuation. These include books by Shannon Pratt, Chris Mercer, Practitioners Publishing Company, Ibbotson Associates and many others. The purpose of this question is to have Garcia tell us which ones he

used so that we can ultimately show that he violated business valuation theory in these publications.

23. Did you rely on any treatises published by the American Institute of CPAs in performing this valuation? Which ones?

My book was not published until 1998 but the publication in Tab 1 was issued in 1993. This is considered nonauthoritative but it was the only business valuation publication issued by the AICPA at that time. I wrote it when I was on the Business Valuation Committee.

24. Who authored these publications?

The only AICPA publications on business valuation are the ones that I have written.

25. Your first report for THE BUSINESS was as of November 30, 1993, correct?

26. And you issued a summary valuation report on March 7, 1994, correct?

27. Although you indicate that the valuation date is November 30, 1993, isn't it true that you used financial data that only went through October 31, 1993?

28. Did you ever issue a full report using financial data as of November 30, 1993?

He may say yes to this because he issued a letter dated March 15, 1994 updating his opinion as a result of a distribution of retained earnings. However, he never issued a complete report updating his figures. Let him just admit that he never did another complete report as of the true valuation date.

29. In your cover letter dated March 7, 1994 (CMB160), the last paragraph states

> The information utilized to perform this valuation includes tax returns and financial statements of THE BUSINESS through October 31, 1993 (see attached), and certain other financial information.

What other financial information did you review to perform this valuation?

30. Does this additional information appear in the Sources of Information included in your report (CMB174)?

If he is cute, he will try to say that it is included in item number 8. Assuming that he does, ask him the next question. Otherwise, skip it.

31. Can you please show me where in your workpapers are the documents that you referred to?

32. Turning to the first page of your report (CMB161), you state that

> The purpose of this study was to arrive at a value to be used by the ESOP trustees for the establishment of the THE BUSINESS Employee Stock Ownership Plan, **whereby immediately following the acquisition of the stock, the ESOP would own more than a fifty percent interest of all outstanding corporate stock**.

    How many transactions were contemplated to take place to ultimately give the ESOP more than 50 percent of THE BUSINESS stock?

33. Would it matter whether there was a single transaction or multiple transactions?

34. If the first transaction created a debt obligation for the ESOP based on the acquisition, would the value of the ESOP be reduced for the second transaction since there is now a liability on the books that did not exist previously?

35. You indicate in your report in the last full paragraph of CMB161 that Revenue Ruling 59-60

> sets forth in some detail the following factors (not all inclusive) which generally are believed to be fundamental 'enough to the valuation of a closely held corporate stock that analysis of each is required.
>
> 1. The nature of the business and the history of the enterprise from its inception.
>
> 2. The economic outlook in general and the condition and outlook of the industry in particular.
>
> 3. The book value of the stock and the financial condition of the business.
>
> 4. The earning capacity of the Corporation.
>
> 5. The dividend paying capacity.
>
> 6. Whether or not the enterprise has goodwill or other intangible value.
>
> 7. Sales of the stock and the size of the block to be valued.

8. The market price of stock of corporations engaged in the same or similar lines of business having their stock traded in a free and open market, either on an exchange or over the counter.

9. The marketability, or lack thereof, of the securities.

10. Whether or not the seller would be able to obtain a control premium from an unrelated third party with regard to the block of securities being valued.

Showing you a copy of Revenue Ruling Revenue Ruling 59-60 (see Tab 4 for a copy of Revenue Ruling 59-60), can you show us where these ten factors are listed?

36. Isn't it true that the 9th and 10th factors that you listed are not part of Revenue Ruling 59-60 ?

37. Do you know where these factors came from?

These are part of the DOL's temporary regulations.

38. Looking at page CMB162 and continuing on to CMB163 of your report

At the bottom of page CMB162 and continuing to the next page, you state the following:

> In valuing the common stock of THE BUSINESS, we believe the following valuation procedures are preferred and are most realistic:
>
> 1. Apply the factors noted above to THE BUSINESS to determine the relevancy of each to the fair market value of THE BUSINESS stock.
>
> 2. Using the relevant factors determined above, establish a realistic formula for computing the fair market value of THE BUSINESS stock to be combined with professional judgment of other factors.
>
> We have relied heavily in our valuation upon known operating results and the financial condition of THE BUSINESS for the prior five fiscal years. Additionally, we have analyzed projections as prepared by management for future years. We believe that this is the most satisfactory method of valuing the stock of a closely held corporation such as THE BUSINESS.

How did you apply “The nature of the business and the history of the enterprise from its inception” in this valuation?

39. On page CMB163 of your report, you discuss the history and nature of the business. Please take me through this entire section and describe each factor that you discussed and explain how it impacted the valuation.

I am trying to demonstrate that he only superficially covered items that are typically included in a history section of a report.

40. On page CMB 164, you start a discussion about the ECONOMIC AND INDUSTRY OUTLOOK, correct?

41. How did you apply “The economic outlook in general and the condition and outlook of the industry in particular” to this valuation?

42. Reviewing this section of your report, the economic factors that you discussed include (1) slow growth in the economy, (2) deficit reduction, (3) health care legislation, (4) business and consumer confidence, (5) interest rates and (6) inflation. How do these sections relate to the valuation of THE BUSINESS?

43. Reviewing the last part of this section of your report, you discussion of the industry is two paragraphs and a conclusion, correct?

44. Can you show us the reference materials included in your workpapers that allowed you to draw the conclusions reached in your report?

45. You indicate in your report that there are other firms involved in this industry, correct?

46. What research did you do. If any, about each of these competitors? Can you show us the documentation in your workpapers?

47. On page CMB165 of your report, you include a discussion of the BOOK VALUE AND FINANCIAL CONDITION of the company, correct?

48. Where in your report is a discussion about the financial condition of THE BUSINESS?

There is no discussion in the report. He once again superficially included a section in his report but never discusses it or the impact it has on the valuation process. Instead all he did was define "book value" –which is meaningless in a valuation because it is adjusted book value that matters, and he adjusted the real estate values to fair market value. He never includes any discussion that would allow a reader to understand the analysis. Instead, he includes some schedules in the back of the report that were spit out of a computer program– but again, he fails to analyze the results.

This next group of questions is intended to show that he did not understand the importance of certain factors from the very revenue ruling (59-60) that he cites in his report.

49. On page CMB165 of your report, you stated "When valuing the stock of a closely held corporation, we believe the adjusted book value of the Corporation's stock is important in determining the actual current fair market value." Did I read that correctly?

50. Are you familiar with Revenue Ruling 59-60?

51. Showing you a copy of Revenue Ruling 59-60, can you please show us where the revenue ruling tells you that the adjusted book value is important in determining the fair market value of a company such as THE BUSINESS?

He will not be able to. The revenue ruling states the following:

Section 5. Weight to Be Accorded Various Factors. The valuation of closely held corporate stock entails the consideration of all relevant factors as stated in section 4. Depending upon the circumstances in each case, certain factors may carry more weight than others because of the nature of the company's business. To illustrate:

a) Earnings may be the most important criterion of value in some cases whereas asset value will receive primary consideration in others. ***In general, the appraiser will accord primary consideration to earnings when valuing stocks of companies which sell products or services to the public; conversely, in the investment or holding type of company, the appraiser may accord the greatest weight to the assets underlying the security to be valued.***

(b) The value of the stock of a closely held investment or real estate holding company, whether or not family owned, is closely related to the value of the assets underlying the stock. For companies of this type the appraiser should determine the fair market values of

the assets of the company. Operating expenses of such a company and the cost of liquidating it, if any, merit consideration when appraising the relative values of the stock and the underlying assets. The market values of the underlying assets give due weight to potential earnings and dividends of the particular items of property underlying the stock, capitalized at rates deemed proper by the investing public at the date of appraisal. A current appraisal by the investing public should be superior to the retrospective opinion of an individual. For these reasons, adjusted net worth should be accorded greater weight in valuing the stock of a closely held investment or real estate holding company, whether or not family owned, than any of the other customary yardsticks of appraisal, such as earnings and dividend paying capacity.

We want to focus him on the fact that earnings, not adjusted book value, is of main importance in the valuation of an operating (versus a holding) company. His statement in the report is contradictory to the revenue ruling.

52. Isn't it true that Revenue Ruling 59-60 states that earnings are more important for an operating company and assets are more important for a holding company?

53. You adjusted the value of the real estate based on an appraisal, correct?

54. You state on CMB165 that "We believe this more appropriately reflects the adjusted book value of the Corporation at the date", correct?

55. Your adjusted book value does not include the value of any intangible assets, correct?

56. What authoritative literature can you point us to that says that the adjusted book value should not include the intangible assets of the company?

57. The next section of your report is entitled EARNING CAPACITY, correct?

58. According to Revenue Ruling 59-60 this is an important part of the analysis, correct?

59. How many paragraphs do you devote to your discussion about your analysis of earning capacity?

60. The first paragraph discusses revenue growth, correct?

61. In the last paragraph on CMB 165, you start off by stating "Net earnings of an ongoing corporation are, in our opinion, one of the most important factors available in determining the fair market value of a closely held corporation's stock", correct?

62. Well which is it, adjusted book value that you stated two paragraphs above in your report or earnings which you are now discussing?

63. You indicate in the bottom paragraph on this page that “We believe the potential investors in the stock of a corporation would place more emphasis on the most recent years’ earnings when valuing the Corporation.” Why is that?

I want to get him to acknowledge that history is not as important as the future in valuation. The use of the most recent year only would be important when it is the most representation of the future of the business. I will ask limited questions now but I will have questions when we get to the calculations.

64. On the top of CMB166, you indicate that you placed more weight on the most recent year as compared to prior years, correct?

65. You also indicate that you adjusted the excess compensation of the officers, correct?

66. What support do you have for the level of compensation that you allowed in your valuation?

67. Can you show us the documentation included in your workpapers to support your conclusions about reasonable compensation?

68. The next section of your report in entitled DIVIDEND PAYING CAPACITY, correct?

69. How did you apply the dividend paying capacity to this valuation?

70. In this section of your report, you conclude with the statement “As a closely held entity, the Corporation does not have the access to equity markets which are available to publicly held corporations to finance anticipated growth.” What does your statement have to do with the dividend paying capacity of the company?

He is probably going to say that THE BUSINESS did not have the capacity to pay dividends because it needed funds to reinvest in the company. This is particularly true since that cannot raise the capital of a public company. However, the company has a track record of distributing enough to the shareholders to pay their income taxes, in which case, why would this change? It is not critical but it is one more instance where he did not understand the words that he put in his report.

71. The next section of your report relates to GOODWILL AND INTANGIBLE VALUE, correct?

72. You indicate at the end of the first paragraph that “Goodwill in the context of Rev. Ruling 59-60, whether positive or negative, is determined by the overall valuation of the Corporation’s equity in relation to its book value.” Did I read that correctly?

73. Can you explain the concept of “negative goodwill”?

There is no such thing. If a company’s value is less that the value of the tangible assets and liabilities, it generally means that as a going concern, the tangible assets are overvalued. They can never be worth less that zero because a negative value would lead to dissolution in bankruptcy over the long run. Revenue Ruling 59-60 never discusses negative goodwill because it does not exist.

74. Showing you Revenue Ruling 59-60 (Tab 4), where does it discuss the concept of negative goodwill?

75. What is the definition of goodwill?

“The expectation of repeat patronage” is the most common definition.

76. Is it possible for a company to have goodwill but not goodwill value?

The answer is yes. The company can have customers coming back over and over again but unless the company returns a profit above the return on the tangible assets, there may not be goodwill value. He is probably not going to know this so let’s go fishing to see what he says.

77. The next section of your report is COMPARABLE STOCK VALUES, correct?

78. In this section of your report, you list the procedure that you applied in this portion of your analysis, correct?

79. Can you show us where in your workpapers are the detailed criteria that you used to identify the “comparable” companies and the detail that you used to perform any analysis on the companies that were located?

80. You indicate in your report that “Entities obtained in our search, while having many similarities tend to be much more widely held in ownership which in turn indicates the stock being traded publicly would have substantial minority interest discounts applied. There is a substantial difference in the marketability of a minority interest of a publicly traded corporation and a majority interest in a closely held corporation.” Did I read that correctly?

81. Let’s dissect that quote. Isn’t it true that all publicly held entities would have their stock held much more widely that a closely held business?

Don’t let him off the hook on this one. It is a rare instance, if it ever happens, where a closely held business has a more widely held distribution than a public entity.

82. Based on that, is it your opinion that you can never use a public company as a comparable in the valuation of a closely held business?

83. Isn’t it true that Revenue Ruling 59-60 tells the appraiser to consider the “The market price of stock of corporations engaged in the same or similar lines of business having their stock traded in a free and open market, either on an exchange or over the counter?”

84. Are you stating that you can never use public companies because their shares are minority interests to value a closely held company?

85. What is a control premium in business valuation?

It is an adjustment that an appraiser makes to bring a minority value to a control value. Empirical studies such as Mergerstat Review are used to obtain the pertinent data to make this adjustment.

86. Isn’t it true that a control premium is used by an appraiser to bring a minority value to a control value?

87. So isn’t it true that you could have added a control premium to a minority value in valuing THE BUSINESS?

88. So isn’t it also true that having the stock widely held should not matter in the valuation of THE BUSINESS?

89. What authoritative source can you point us to that states that one of the criteria to be used in determining comparability for use in the market approach is how widely held the shares are?

90. What is a marketability discount in business valuation?

This is a discount that is taken to reflect the fact that a publicly traded stock is generally only a few days to cash whereas it would take a longer time to sell an interest in a closely held company.

91. Why is there a substantial difference in the marketability of a minority interest of a publicly traded corporation and a majority interest in a closely held corporation?

92. Isn't it true that there are many appraisers that believe that there should be little, if any, marketability discount applied to a controlling interest in a closely held business?

93. What authoritative source can you point us to that states that one of the criteria to be used in determining comparability for use in the market approach is the marketability of the shares?

94. What were the similarities that you found between THE BUSINESS and the entities that you identified in your search but eliminated as comparables?

95. Where is that information documented in your workpapers?

96. The next section of your report is METHODS OF VALUATION, correct?

97. You indicate that "There are four general methods of valuation to be considered in any valuation assignment, they are the Asset, Income, Market Data, and Cost methodologies." Correct?

98. What authoritative source can you point use to that states that there are "four general methods of valuation to be considered in any valuation assignment, they are the Asset, Income, Market Data, and Cost methodologies?"

99. In your discussion of the Asset Approach, you discuss three basic techniques, one being Book Value. Correct?

100. What is your authority for Book Value being considered a basic technique?

101. What is the basis for your statement that "Adjusted Book Value represents the fair market value of the tangible assets and liabilities of the business?"

102. Under your discussion of the Income Approach, you indicate "The most common techniques under this methodology are the Price/Earnings Ratio Analysis..." Isn't it true that Price/Earnings is a commonly used multiple applied in the market approach and it is not an income approach methodology?

If he says it is ask him for the authoritative source for his answer.

103. Isn't that also true about the "Dividend Payout Ratio and a multiple of Gross Receipts?"

104. You indicate that “Although these approaches concentrate on the income available to the owners, they sometimes integrate other methods by considering the market value of certain fixed assets and the cost of some intangible assets.” What does that statement mean?

105. What is your authoritative source for the definition of the Cost Method appearing on CMB168?

106. On page CMB169, you list the approaches utilized in your valuation, correct?

107. The first method that you list is Book Value, correct?

108. Isn’t it true that starting on page CMB167 and concluding on CMB168 you state “Book Value is composed of the historic cost of assets minus liabilities, and is therefore not considered a good measure of value?”

109. Then why did you use this method if you believe it “is therefore not considered a good measure of value?”

110. The third method that you list is Liquidation Value. Why did you use this method?

This method is required in the standards to be considered if the highest and best use of the property would result from liquidation. Considering the fact that he had determined considerable intangible value, liquidation should not have been used.

111. Under liquidation value, you indicate “To calculate this approach, an estimate of the liquidation proceeds for the fair market value of each asset is made. The difference between this and the liabilities owed is termed Liquidation Value.” Can you show me where in your report you have performed the liquidation analysis?

He is going to point you to his Schedule VII. Note that his liquidation method is the exact same as his adjusted book value method. He never used liquidation values for the assets. There is a difference in many of the asset values as a going concern or as if in liquidation. For example, fixed assets in liquidation are frequently worth much less than they would be as a going concern. We will ask him more questions when we get to this schedule. I just want him on the record pointing to this schedule.

112. On page CMB169, item number 1 explains the CAPITALIZATION OF EARNINGS. You discuss capitalizing either net income or net income before taxes, correct?

113. Isn’t it true that most appraisers prefer to use net cash flow rather than earnings?

114. In a growing company, which is more important–earnings or cash flow?

Cash flow. Many companies go under because they do not have adequate cash flow to support their growth.

115. You indicate that net income in this method is "weighted"–correct?

116. Which is more important to an investor, historic earnings and cash flow or future earnings and cash flow?

117. What do the authoritative books in business valuation state is the correct time to use a capitalization model?

The books all state that you use this model when the cash flow or earnings is expected to be stable going forward and the stream being capitalized if fairly predictable as being representative of the future operations for the company being valued. You do not use this method in a high-growth company.

118. The method that you describe under number 2 is the Capitalization of Earnings before Interest, correct?

119. When is the appropriate time to use this methodology according to the business valuation literature?

When the capital structure of the appraisal subject is significantly different from the comparable companies.

120. The last sentence of this description states "In order to calculate total business and entity value, the interest bearing debt and the Nonoperating Assets and Liabilities are considered." What does this mean?

If he does not explain that after the value of the debt and equity is calculated, you MUST subtract the debt to get to the value of the equity and then you add the nonoperating items, ask him the next questions.

121. Isn't it true that after you determine the value of the combined debt and equity, you must subtract the value of the debt to derive the value of the equity?

122. If he answered no–ask him what authoritative source he is relying on for his answer?

123. On page CMB170, item 3 discusses the CAPITALIZATION OF EXCESS EARNINGS, correct?

124. You state that “The capitalization of excess earnings is the most widely used valuation technique,” correct?

125. Isn’t it true that your statement is incomplete? Isn’t the balance of this statement that it is the most widely used technique for small businesses and professional practices?

126. Isn’t it true that this method is described in Revenue Ruling 68-609?

127. What is the historical evolution of Revenue Ruling 68-609?

He may not know. Here it is (from my textbook):

The excess earnings method was promulgated in Appellate Review Memorandum (ARM) 34 in 1920. The purpose of ARM 34 was to provide a formula to be used in determining the proper amount of compensation for the owners of breweries and distilleries for the loss of goodwill that resulted from Prohibition. To assist in this task, ARM 34 included rates of return on the investment in assets employed in these types of businesses. This was supposed to allow a separation of the tangible and intangible portion of the taxpayer's income stream to be used in the formula. As the formula method became more popular and started being used for other types of businesses, it became apparent that the rates included in the memorandum may not have been appropriate in every situation or appropriate over time.

Revenue Ruling 68-609 was issued to correct the misinterpretations regarding the use of the excess earnings method in the valuation of goodwill. This revenue ruling suggested higher rates of return, but also led appraisers to the belief that this methodology is appropriate for all types of businesses. As time went by, the Internal Revenue Service began to recognize that the excess earnings approach was being misapplied in practice. It had been used to value entire businesses, when it was intended only to value the intangible assets.

In Revenue Ruling 68-609, the IRS has gone on record to state: "The (excess earnings) approach may be used *only* if there is no better basis available for estimating the value of intangible assets." There are frequently better methods to use in valuing businesses, and therefore, the excess earnings method is not always appropriate. Still, it continues to be used by many appraisers.

128. Showing you Revenue Ruling 68-609 (Tab 5) , please read the highlighted section. Isn’t it true that even the Internal Revenue Service tells us not to use this method if there is a better method available?

129. Do you believe that there were no better methods available in this valuation of THE BUSINESS?

130. The next method that you discuss is the DISCOUNTED FUTURE EARNINGS, correct?

131. Why don't you refer to cash flow in your description of this method?

132. Isn't cash flow a better measure of return to the shareholders than earnings?

133. In your description, you define two models for this method, one is a net asset residual and the other is an income residual, correct?

134. When is the correct time to use each of these models?

The net asset residual is most commonly used when the entity has a limited life, such as a joint venture, and liquidation is expected at the end of the venture. The income residual is always used for a going concern.

135. On top of page CMB171, while discussing this approach, you state "The approach also requires that the appraiser predict proper discounting factors over that same period." Correct?

136. How did you "predict" the proper discounting factors in this assignment?

137. Can you show us in your workpapers where you documented the determination of the proper discounting factors?

138. In the section of your report entitled MARKETABILITY DISCOUNT, you indicate that management told you about other entities interested in acquiring an interest in THE BUSINESS, correct?

139. Did you see an offer letter or a letter of intent for any of these discussions?

140. Did these discussions take place before or after October 31, 1993?

141. You indicate that "Based on this representation, there appears to be some level of marketability of the Corporation's stock." If this is the case, doesn't this contradict what you said on page CMB167 about the being a substantial difference in the marketability of a minority interest in a publicly traded corporation and a majority interest in a closely held corporation?

142. If marketability was not a major issue, why couldn't you have used some of the comparables that you eliminated?

143. In determining the applicability of a marketability discount in this assignment, did you consider the ages of the participants in the ESOP?

144. If so, how? If not, why not?

145. Did you receive any census information about the participants in the ESOP?

146. What documentation do you have in your workpapers about this?

147. At the bottom of page CMB171, you indicate that there was a transaction with a less than 5 percent shareholder that was no longer employed by the company. Was that an arms' length transaction?

148. If yes, why did you not include an analysis of this transaction in your valuation?

149. Isn't it true that Revenue Ruling 59-60 tells you to consider "Sales of the stock and the size of the block to be valued?"

150. Don't you think that an arms' length transaction could have been some assistance in determining what a willing buyer and a willing seller actually transacted?

Let's go to the schedules now.

151. Turning to the Schedules in your report, what computer program did you use to generate all of these schedules?

152. Where in your workpapers do you include a narrative explaining your analysis and conclusions resulting from all of the schedules that you produced as part of this report?

153. In analyzing Schedule II (CMB177), what did you find out was the reason for cash being so high in 1991?

154. What was included in other long term assets in 1991?

155. Why did accounts payable jump in 1991?

156. What is included in the line Non-op Assets?

157. Schedule III (CMB179) shows the Adjusted Summary Income Statement Comparison with an adjustment for officer salary and income taxes, correct?

158. What is the basis for the adjustment made for officer's salary?

159. What support do you have for this adjustment?

160. You used a 34 percent margin tax rate in your valuation, correct?

161. Doesn't the U.S. tax laws have a graduated tax structure that would result in a different rate of tax for THE BUSINESS based on state and federal taxes?

162. Were there any income or expense items associated with what you considered to be nonoperating assets?

163. If so, why weren't these items adjusted in Schedule III?

164. In light of the size of THE BUSINESS, why did you perform calculations using what you considered to be HISTORIC SIMPLE CASH FLOW in Schedule IV (CMB182)?

165. Isn't it true that Owner Discretionary Cash Flow is only used for very small businesses?

166. Isn't it true that you used this because the computer spit it out irregardless of its appropriateness for this valuation?

167. How did you use Schedule IV in your valuation? (CMB 182 and 183)

168. What was the purpose of Schedule V (CMB184)?

169. How did it influence your conclusions?

170. Where in your workpapers is the analysis of these calculated figures?

171. Why is the industry column filled with zeros?

172. Are these the only financial ratios that you considered important in this valuation?

173. What other financial ratios were important in this analysis?

174. Did this computer system calculate any additional ratios that you did not include in the report?

175. On page CMB185, you show common size financial statements. What conclusions have you noted in your workpapers about this schedule?

176. What caused operating expenses as a percent of sales to drop so much?

177. Do you workpapers contain a fixed versus variable cost analysis?

If he is silly enough to say yes, make him produce it.

178. What do the figures on page CMB186 mean?

179. How did these figures influence your valuation conclusions?

180. Did THE BUSINESS have preferred stock?

181. Then why did you include Schedule VI (CMB187) which relates to a preferred stock valuation?

182. Turning to Schedule VI (CMB188)– this schedule is the basis for your discount rates and capitalization rates, correct?

183. Show me in your workpapers where each number comes from on this schedule?

184. What support do you have for the Long Term Treasury/Corp Bond rate of 6.0%?

185. If you did not have industry data for comparison in your financial ratios and common size financial statements, where did you get the Industry ROE (return on equity) median and high figures of 10% and 15% from?

186. What is the source of these figures?

187. What is the basis for a 10% adjustment for management continuity/depth?

188. Where in your report do you discuss management continuity/depth as being such a significant risk factor?

189. What is the basis for the long term business growth of 15 percent?

190. Can a business grow 15 percent per year into perpetuity?

191. What is the basis of the long term industry growth of 6 percent?

192. Where is the support for this figure?

193. If THE BUSINESS continues to grow at a rate that is 250 percent of the industry growth rate, can you tell us how many competitors will be taken over by THE BUSINESS?

194. With a 15 percent growth rate into perpetuity, what crime statistics support the fact that THE BUSINESS will grow to be larger that the U.S. Economy at some point in the future?

195. In calculating the quantitative risk premium of 4 percent, what support did you use?

196. Is this a generally accepted method of calculating this figure?

197. What authoritative treatise can you point us to that calculates this risk premium in this fashion?

198. Isn't it true that in the 1993/1994 time frame, data provided by Ibbotson Associates was the most widely used data to calculate equity risk premiums in developing a discount rate?

199. But you did not use this, did you?

200. Do you believe that a 9 percent long term sustainable growth rate was reasonable for THE BUSINESS?

201. What is your support for a 5 percent excess earnings premium?

202. How did you calculate an 8.1 percent blended rate for EBIT?

203. Why was the return on net assets of 10% the same as the industry return on equity?

204. Doesn't equity net assets and liabilities?

205. If that is so, how can you have the same return for just assets as you would have for assets minus liabilities?

206. What is a small company risk premium?

207. Is this generally used in the build up of a discount rate?

208. Why didn't you use it in this valuation?

209. Do you know if the returns information that you have used apply to cash flow or earnings?

210. Does it make a difference?

211. Excess earnings is used to calculate the value of intangible assets, isn't it?

212. Is a capitalization rate of 16 percent a reasonable rate considering the risk involved in intangible assets?

213. What is your support for the reasonableness of this rate?

214. What empirical data do you have in your workpapers to support this rate?

215. Turning to Schedule VII (CMB189), this schedule reflects your adjusted book value method and the liquidation value method, correct?

216. What value did you reach under the adjusted book value method?

$34,029,000

217. What value did you reach under the liquidation value method?

$34,029,000

218. Is it normal for both of these methods to result in the same value?

The answer should be no. Liquidation value rarely, if ever, will be the same as adjusted book value. Liquidation value of most assets will be lower than the value as a going concern. Also, in order for the liquidation value method to be properly calculated, costs of liquidation must be factored into the valuation. He never did this.

219. In applying the liquidation value method, shouldn't there be costs of liquidation reflected in the methodology?

220. What authoritative sources did you rely on to calculate liquidation value in the manner in which you did in this valuation?

221. Turning to your Schedule VIII (CMB190), you have a heading on this page that it is a CAPITALIZATION OF EARNINGS, correct?

222. Is this the normal manner in which a capitalization of earnings calculation is performed?

The answer is no. He is not really capitalizing earnings but rather owner's discretionary cash flow. This is only used for small, single owner-operated businesses. It would not be applicable to THE BUSINESS. Also, we are going to start attacking his use of weighted average earnings and his capitalization rate.

223. What authoritative source can you show us that supports the manner in which you calculated the capitalization of earnings?

224. Is it normal to use Owner Cash Flow in the capitalization of earnings for a company the size of THE BUSINESS?

225. You used a weighted average of the past 5 years in this calculation, correct?

226. Why did you do this?

227. Do you expect the 5 year history of THE BUSINESS to be a good predictor of the future operations of THE BUSINESS?

If he says yes, follow up with the next couple of questions. If he says no, ask him why he used this in the first place if it is not representative of the future

228. What were your calculated weighted average earnings?

$4,428

229. Looking at the trend from 1989 to 1993, would you agree that every year has been an improvement over the prior year in terms of earnings?

230. Assuming that THE BUSINESS is going to be able to take advantage of the growth that you have indicated in your report–i.e. 15% long term business growth– do you believe that the earnings of THE BUSINESS will go up, go down or remain flat?

He has to say go up.

231. If that is the case, why have you used the weighted average forecast of $4,428 as a basis for capitalization when it is lower than the results from the last 2 historic time periods of $4,714 and $6,250?

232. Do the results from the years 1989 and 1990 have any relevance in determining the future income for THE BUSINESS in this valuation?

233. Don’t you agree that those years are really not relevant at all?

234. Then why did you use them in the weighting of the income?

235. You used an 11 percent capitalization rate in this model, correct?

236. Do you know what stream of income the 11 percent capitalization rate is applicable to?

Capitalization rates that are developed are generally applicable to either cash flow, earnings, earnings before interest and taxes, etc. Each stream of income that is capitalized used a different capitalization rate. I want to get him to admit that he does not know what stream of income his cap rate is applicable to.

237. What makes your capitalization rate applicable to owners cash flow?

238. What authoritative source can you point us to that supports your position?

239. In determining the owner cash flow, how many owners would that cash flow pertain to?

240. You adjusted officer compensation. How many officers did you allow for in the determination of reasonable compensation?

241. Let’s turn to Schedule IX (CMB191). This is your capitalization of excess earnings calculation, correct?

242. Why did you use pre-tax adjusted net income as a starting point in this calculation?

243. What authoritative source says that this is a proper starting point?

244. Why would you use pretax income in this method and after tax income in your last method?

245. You subtracted a return on book value of 10 percent from each of these years, correct?

246. Is book value the appropriate measure of the tangible assets to be used in this method?

247. What is your authority for doing this?

All appraisal text books indicate that you should use market value and not book value to calculate the return.

248. Here also, you used a weighted average of the excess earnings, correct?

249. Do you believe that the weighted average excess earnings of $3,289 are representative of the future excess earnings for THE BUSINESS?

250. Showing you a copy of Revenue Ruling 68-609 (Tab 6), please read the highlighted portion of this ruling into the record.

He will read: "The past earnings to which the formula is applied should fairly reflect the probable future earnings."

251. Isn't it true that you have violated the statement that you just read from Revenue Ruling 68-609?

252. Is the capitalization rate of 16 percent a pretax or after tax capitalization rate?

253. What makes it that?

254. What was the value that you came up with for this method?

$54,584,000

255. What was the value that you had in the capitalization of earnings method?

$40,602,000

256. Why were the results of these two methods so far apart?

257. Turning to Schedule X (CMB192), Comparable Business Sales Database, you have already testified that you did not find comparables that were acceptable for use in this valuation, correct?

258. In fact, this schedule does not have any comparable companies listed, correct?

259. Most of this schedule contains zeros, correct?

260. Under SELECTED MULTIPLE, there appears figures for P/E Ratio, % of Sales and Multiple of Book, correct?

261. Where did these numbers come from?

262. Where in your workpapers are these values documented?

263. The next page in your report (CMB1598 probably 193) shows all zeros, correct?

264. Why is this schedule in the report?

265. The next page (CMB1599 or 194) shows some calculations, correct?

266. In fact, you use the Price to Earnings Ratio of 5 from page CMB192 in this calculation, correct?

267. Is there a relationship between a price to earnings ratio and a capitalization rate?

The answer is yes. The P/E Ratio is the mathematical inverse of a cap rate for earnings. For example, his P/E Ratio of 5 would be converted to a cap rate as 1/5 = 20%. However, he used a cap rate of 11% before. This shows the inconsistency in his numbers. If he says yes to this question, ask him the next few questions. If he answers no, let it be and I will kill him with it at trial.

268. What cap rate would result from a P/E Ratio of 5?

269. How do you explain the fact that you used a P/E Ratio of 5 in this calculation, which is the equivalent of a cap rate of 20% but you used a cap rate of 11 percent when you capitalized earnings in you other method?

270. Furthermore, how do you explain that the cap rate here of 20 percent is higher than the excess earnings capitalization rate that you used of 16 percent?

271. On the next page (CMB195) you applied a 20 percent factor to sales, correct?

272. Where is the support for the 20 percent figure used?

273. On the next page (CMB196) you used a 1.25 factor as a multiple of book, correct?

274. Where is the support for the 1.25 times factor used?

275. Isn’t it true that the first figure on this page, Book Value $4,118, comes from Schedule II (CMB177) of your report?

276. Isn’t it also true that included in the derivation of the $4,118 on Schedule II is $350 that was included as Nonoperating assets?

277. Then isn’t it also true that by adding back the $350 on Schedule X (CMB196) you double counted the nonoperating assets?

278. Schedule XI (CMB197) is a schedule that reflects PROFORMA INCOME STATEMENT ADJUSTMENTS, correct?

279. Why did you adjust Total Revenue by $1?

280. Can you show us your workpapers that support the forecast assumptions that you used in Schedule XII (CMB198) in your report?

281. How did you support a manual growth rate of revenues of 62.34%?

282. How does this rate get applied to the figures on Schedule XIV (CMB 201 and 202)?

283. How did you support operating expenses as a percent of sales of 41.32%?

284. How does this rate get applied to the figures on Schedule XIV (CMB 201 and 202)?

285. Why did you use a marginal tax rate of 17.32% here but 34% earlier in your calculations?

286. Schedule XII (CMB199) seems to indicate that despite there being figures for many of these items, only Accounts Receivable Turnover of 12.66 has been forecasted. Can you explain the applicability of this schedule to your valuation?

287. Schedule XIII (CMB200) reflects a FIXED ASSET BUDGET, correct?

288. Projected fixed asset purchases are zero. Are you telling us that you expected THE BUSINESS to grow but not reinvest any proceeds in fixed assets?

289. Is it normal for a company to experience a high rate of growth and not have to either replace or expand its operating facilities to meet that growth?

290. Can you show us in your workpapers where you have documented any discussions that you had with management of THE BUSINESS about their future needs for fixed assets?

291. Turn to Schedule XIV (CMB201), where in your workpapers is the supporting documentation to support this forecast?

292. Why does this forecast include Interest Expense of $905 in the base year 1993 but then have $0 in all subsequent years?

I want him to tell us that he did a debt-free approach.

293. How are the estimated income taxes calculated in this schedule?

294. The fact that there is no change in Long Term Debt on this schedule, can I safely assume that you have used a debt-free methodology?

295. Turning to Schedule XIV (CMB203 and 204), where in your workpapers is the supporting documentation to support this forecast?

296. Does it seem reasonable to you that THE BUSINESS would keep cash of $21,623,000 in the company in 1997 and then have it grow to over $86 million at the end of the forecast period?

297. Turning to the line that is labeled LT Note Pay #1, can you explain how long term debt decreases from 1993 to 1994 and then takes a significant jump in 1995 with significant declines in subsequent years until the last year of the forecast when it once again jumps significantly?

298. What was this debt being used to finance?

299. In 1995, you forecasted net income of $9,305,000 on page CMB201, correct?

300. You show $0 for purchasing fixed assets and $0 for dividends, correct?

301. How do you explain the decrease in equity that you have forecasted on CMB203 from $38,819 to $29,543?

302. Isn't this decrease due to the fact that you have forecasted an increase in Long Term Debt of about $13.6 million in 1995?

303. Can you explain what due diligence you performed to make certain that these figures make sense?

304. Isn't it true that on page CMB163 you indicate that "we have analyzed projections as prepared by management for future years."?

305. Where in your workpapers is that analysis?

306. On CMB203, in the first column, next to the word Retain is the number 8.00. What does that number represent?

307. On Schedule XV (CMB205) you show a PROJECTION SUMMARY, correct?

308. I am reading this schedule correctly if I say that it says that while gross revenues goes up from $13.7 million to $69.5 million, and total assets go up from $52.7 million to $142.0 million, liabilities are projected to go down from $19.6 million to $13.8 million?

309. As an accountant, does this make sense to you?

310. Let's turn to Schedule XVI (CMB206). This is your DISCOUNTED FUTURE EARNINGS – INCOME RESIDUAL METHOD, correct?

311. The earnings that are being discounted come from your schedule XIV (CMB201), correct?

312. On Schedule XIV (CMB201), what is the justification for officer's salary increasing from $600 in 1994 to $1,530 in 1995 through 1999 and then decreasing in the year 2000 to $400 for the remainder of the forecast?

313. Going back to Schedule XVI (CMB206), you used a discount rate of 20%, correct?

314. And that comes from Schedule VI (CMB188), correct?

315. The earnings from Schedule XIV (CMB201) are without interest expense, correct?

316. So they are debt-free?

317. Isn't it true that the correct discount rate to be used for a debt-free valuation is known as a weighted average cost of capital, or a WACC?

318. But that is not what you used, is it?

319. Why not?

320. Let's discuss the income residual earnings that you used in this schedule of $13,408. Is the income residual earnings and the calculation that you made also referred to as a terminal value?

321. Is it normal for the terminal value amount to be the same as the last amount in your forecast?

322. You used the same amount in period 5 and the income residual, correct?

323. What is the present value of the terminal value in your calculation?

324. How is it calculated?

Make him do the math. His numbers do not make sense. I think they are wrong.

325. If the calculation of value that you performed is without interest expense, which we have agreed that it is, isn't the value that you came up with the value of the debt and equity of THE BUSINESS?

> If he says no, he will probably try to wiggle around the fact that he did not use a WACC. If he says yes, we will point out that he forgot to subtract debt to get to value. Either way he will be in trouble. If he say no, ask question 326. If he says yes, skip 326 and go from 327.

326. If no, what is it?

327. If yes, shouldn't you have subtracted the interest bearing debt of THE BUSINESS from the result of your calculation to get to the value of the equity?

328. Turning back to Schedule II (CMB177), interest bearing debt would be the sum of short term notes payable of $300 plus long term debt, current portion of $2,950 and Long term notes payable #1 of $11,976, totaling $15,226, correct?

329. So you overstated your valuation conclusion in this method by $15,226,000 if everything else is properly calculated, correct?

330. Turn to Schedule XVI (CMB207). This is your DISCOUNTED FUTURE EARNINGS – NET ASSET RESIDUAL METHOD, correct?

331. If the earnings stream that you used in this method is without interest, is this also debt-free?

332. If no, why not?

333. If yes, shouldn't you subtract the debt in deriving an estimate of value under this method?

334. Turn to Schedule XVII (CMB208). Is THE BUSINESS a professional practice?

335. Then why did you include a schedule called PROFESSIONAL PRACTICE APPRAISAL?

336. Do you agree that this is totally meaningless?

337. Turn to Schedule XIX (CMB210). This schedule is incomplete, correct?

338. Why did you include it as part of this valuation?

339. Turn to the next page (CMB211). This schedule has all zeros except for the discount rate, correct?

340. Isn’t it true that your computer program fills in this information based on the inputs that you made previously?

341. Do you believe that the same discount rate would be applied to specific intangible assets regardless of what those assets were, particularly when you used the same 20 percent discount rate to discount the debt free income of the company?

342. What authoritative source can you point us to in support of your position?

343. Turn to Schedule XX (CMB 212). This schedule is entitled INDUSTRY BENCHMARK OF VALUE, correct?

344. Where is the documentation in your workpapers to support the figures used in this schedule?

345. Turn to Schedule XXI (CMB213). This is your VALUATION SUMMARY, correct?

346. Can you explain why you indicate in your report that book value is not a good measure of value but you assigned some weight, albeit small, to this method in deriving your final conclusion of value?

347. Since your adjusted book value method does not include any intangible value, why did you apply any weight to this method?

348. Liquidation value, although calculated incorrectly was also given weight in this appraisal, wasn’t it?

349. The cost to create approach was incomplete and yet you put weight on it, didn’t you?

350. Both of your discounted future earnings methods were weighted pretty heavily weren’t they?

351. But you never subtracted the debt from either, did you?

352. This means that you weighted incorrect results pretty heavily doesn’t it?

353. Can you show us where in your workpapers you have documented the rationale used to weight these different methods?

354. Schedule XXI (CMB214) contains a SENSITIVITY ANALYSIS, correct?

355. Why would you perform a sensitivity analysis on methods that you applied no weight to?

356. Turn to Schedule XXII (CMB215). Explain this page to us?

357. Are you indicating that the covenant not to compete would be amortized over 25 years?

358. Have you ever seen a covenant that covers a 25 year period?

359. Do you believe that this was a reasonable assumption?

360. Turn to Schedule XXIII (CMB216). Do you believe that the result of your analysis demonstrates that you reached a proper valuation for THE BUSINESS?

361. Is ten year financing typical for a business transaction?

362. Why did you use a 34% tax rate here when you used different rates previously?

363. Do you think that a prudent willing seller would leave as much cash on the table as your analysis shows?

A smart seller would not allow from $4 million to $17 million to be left over for the buyer in a deal like this. Realistically, some cash may be left on the table, but the seller is never going to allow a buyer to steal this much of a return. Garcia is basically saying that besides getting a 20 percent rate of return (his discount rate), the buyer is also going to have a windfall left over each year which increases the return on investment. It does not make sense.

Let's leave this report alone now and go to the next document. It is the March 15, 1994 update of the original value due to the distribution of retained earnings.

364. You updated your value in this matter as a result of the distribution of retained earnings, didn't you?

365. You issued a letter dated March 15, 1994 updating your original report, correct?

366. You stated in this letter that "It has been represented to us by the current stockholders and their representatives that no events have occurred subsequent to the October 31, 1993 interim financial statements that would have a material effect on, or would require disclosure in, the financial statements prepared in accordance

with generally accepted accounting principles, other than the distribution of retained earnings totaling $1,540,000." Correct?

367. Did you look at the November 30, 1993 financial statements or did you merely accept the representations that were given to you?

368. Would the removal of approximately $1.5 million impact the balance sheet of the company when applying a discounted future earnings net asset residual method?

369. If 28 percent of the weight that you placed was on this method, wouldn't it impact your valuation analysis and conclusions?

370. Is there such a thing as a subsequent event in business valuation?

The answer is no. This is an accounting disclosure that has nothing to do with valuation. His wording in the letter shows that he was being an accountant and not an appraiser.

371. Are you telling us that the only thing that changes your opinion from the 1993 valuation is the distribution of cash?

372. If THE BUSINESS distributes $1.5 million in cash, what would be the impact on the current ratio?

373. What would be the impact on the debt to equity ratio?

374. Doesn't the distribution of this much cash create a higher level of risk for the stockholders since this money is no longer in the company?

375. If it does not, shouldn't this cash have been considered to be nonoperating since it would not have been required by the operations?

Let's now go to the 1994 report.

376. You issued a report as of December 31, 1994 under cover letter dated June 21, 1995, correct?

377. Would you agree that the written narrative contains much of the same boilerplate as the original report?

378. If not, tell us what is different?

379. Can you show us what documentation is contained in your workpapers that pertains to the economy and industry section of your 1994 report?

380. Isn’t it true that you have used the same wording, without much change at all, in the industry section of your report from the 1993 report?

381. Was there no new information available over an entire year?

382. Turn to Schedule I (CMB881). Am I correct that you purchased an updated version of the computer program that you used for this valuation?

383. Where is the support for the long term interest rate of 6% that you have listed on this schedule?

384. What was the basis of using a marginal tax rate of 34%?

385. Turn to Schedule II (CMB883). You adjusted officer salary, correct?

386. Where is the support for your adjustments?

387. Why is there no adjustment in 1994 when there is an adjustment in all other years?

388. Isn’t the tax adjustment overstated on this schedule because you used a marginal tax rate of 34% instead of the graduated rates under the tax laws?

389. Do you have workpapers that discuss your analysis regarding the adjusted net income?

390. How do you explain the significant increases from 1990 through 1993 and the sharp decline in 1994?

391. Turn to Schedule III (CMB886). In the previous valuation, you did not forecast any additional fixed assets, correct?

392. Looking at what actually happened, isn’t it true that in 1994 gross fixed assets actually increase by $4,323?

393. What caused long term debt to increase in 1994 to $32,961 from $11,976 in 1993?

394. Is this operating debt of THE BUSINESS?

395. In both valuation reports, you adjusted the real estate to market value but you did not adjust accumulated depreciation. Why not?

396. Turn to Schedule IX (CMB897). Can you show us where in your workpapers is the support for the 10 percent long term business growth that was selected?

397. Can you show us where in your workpapers is the support for the 25 percent excess earnings premium that was selected?

398. The excess earnings premium in your first report was 5 percent. Why is there a 500 percent increase in this premium from one year to the next?

399. Are the intangible assets more risky than they were previously?

400. Turning to the next page (CMB898), explain w2hat you have presented in this schedule?

401. Am I correct that this is a weighted average cost of capital calculation leading to a WACC capitalization rate?

402. Can you tell us the authority that you are relying on to determine the debt to equity relationship that you have used in this schedule?

403. Isn't a WACC calculated using the market value of debt and equity?

404. In fact, isn't this what every valuation treatise suggests that you use?

405. Why is your calculation correct?

406. Turn to Schedule IX (CMB899). This is your build up of your discount and capitalization rates, correct?

407. What is the source of each figure that you have used ib this schedule?

408. Where in your workpapers is the backup?

409. Is it your opinion that THE BUSINESS has no specific company risk?

Assuming that he says that there is none, ask the following questions. If he says there is, ask him why he did not include any (subjective risk premium) in his calculations.

410. In the most recent period, adjusted net income dropped, correct?

411. Does this not present a risk for the company?

412. In the 1993 appraisal, you included a 10 percent factor for management continuity/depth. What did THE BUSINESS do to cure this large amount of risk from the previous year?

413. Would this not still present some level of risk?

414. How easily can THE BUSINESS raise capital compared to a public company?

415. Wouldn't this indicate risk?

416. Didn't THE BUSINESS's balance sheet in 1994 become significantly negative in the equity section?

417. Wouldn't this represent risk?

418. Does THE BUSINESS's cash flow and earnings equal each other?

419. Then why is there no adjustment for a cash flow to net income conversion on CMB899?

420. Schedule X (CMB900) shows a CAPITALIZATION OF EARNINGS calculation, correct?

421. The calculation of earnings in this schedule is different that the owner cash flow that you used in 1993, correct?

422. Do you always do valuations according to how your software works or do you perform the calculations in the appropriate manner according to the authoritative sources in the industry?

423. Why did you change earnings streams in this valuation?

424. Does the use of a weighted average make sense in light of the earnings stream?

425. Turn to Schedule XI (CMB902). This is your CAPITALIZATION OF EXCESS EARNINGS, correct?

426. Once again, your calculations are done differently from the 1993 valuation, correct?

In 1993 he calculated a return on the tangible assets for each year. This time the software changed and it is a single calculation on CMB903.

427. Turn to page CMB903. Why is the return on operating assets $0?

428. Isn't that because you forgot to put a value on Schedule B (Schedule IX CMB897)?

429. If you used the same 10 percent from the 1993 report, what would the result be?

Adj. Book Value $18,235 x 10% = $1,824. $2,299 - $1,824 = $475 ÷ 9% = $5,278 instead of $25,544. This is a $20.3 million error.

430. Schedule XI (CMB903) uses a cap rate for excess earnings of 9 percent, correct?

431. Where does that rate come from?

If you look at Schedule IX (CMB899) the excess earnings capitalization rate is supposed to be 36%.

432. So if you correct both errors, the value using this method would change from $43,779 which you calculated to $19,554 representing a mistake by you of $24.225 million, correct?

433. Turn to Schedule XII (CMB904). Where in your workpapers is the support for the growth rates that you used on this schedule?

434. What analysis did you perform to support the forecasted earnings?

435. Turn to Schedule XV (CMB907). Let's talk about your schedule that is entitled CONCLUSIONS OF VALUE, okay?

436. You put twice as much weight on adjusted book value as liquidation value but you have the same values for both methods. Why is one method more heavily weighted than the other?

437. You put 50 percent of your weight on the excess earnings method and we already discussed your $24 million error. This has a significant impact on your outcome, doesn't it?

I Think He Should Be Fried By Now!!!!!