

## Fannon and Dunitz Discuss Lost Profits and Other Commercial Damages

The calculation of lost profits and other commercial damages represent a growing opportunity for valuation experts. The most extensive book in this area is the third edition of *The Comprehensive Guide to Lost Profits and Other Commercial Damages*, edited by Nancy J. Fannon, CPA, ABV, ASA, MCBA (Meyers, Harrison & Pia), and Jonathan M. Dunitz, Esq. (Verrill Dana). Along with an all-star cast of contributing authors, Fannon and Dunitz have just completed the newest edition of this book, a significantly enhanced and expanded version of the second edition. *BVU* recently talked about the new edition with the editors, who also gave their unique insights into the practice of lost profits and damages.

### ***BVU:* What makes the valuation of lost profits/damages different or unique when compared with other types of valuation assignments?**

**Nancy Fannon:** I think the most notable difference (compared to a nonlitigation engagement) is the amount of evidence that you need to support a damage claim. This affects everything you do from the minute you take that first phone call to the end of the engagement. Also, the attorneys who handle these cases tend to be of a very high caliber, and financial experts really need to be conversant not only in the economics of damages, but also with the law that guides the appropriate remedy associated with different actions.

### ***BVU:* Has there been an increase in the amount or complexity of the evidence needed?**

**NF:** Absolutely. I've been practicing business valuation for 28 years and testifying for 20 years. When I

*continued on page 5...*

## Seven Takeaways From Recent Business Valuation Cases

Many business valuation cases work their way through the courts, but only some of them have a significant impact on the profession. That handful of important cases is the subject of a regular webinar update by BVR's legal editor, attorney Sylvia Golden, and business appraiser R. James Alerding, CPA/ABV, ASA (Alerding Consulting LLC).

Of course, the two discussed many key aspects of these cases, but here are the most salient points for valuation analysts.

### **1. Excess earnings method is alive and well.**

Although the excess earnings method has its critics, it is in use and it stands up in court, especially when valuing small businesses and professional practices. It was the method one party demanded and the court approved in a New

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## Can Regional Data Be Used to Determine Reasonable Compensation Anywhere?

By Stuart Weiss, CPA/ABV

If you're valuing small private companies, then you know that one of the biggest adjustments to be made is for reasonable compensation. But getting good, supportable data is often a challenge—and expensive. Therefore, consider a regional survey, which could give you the data you need at an affordable price.

In their book, *Reasonable Compensation: Application and Analysis for Appraisal, Tax and Management Purposes*, Ron Seigneur, ASA, CPA/ABV/CFF, CVA, and Kevin Yeanoplos, CPA/ABV/CFF, ASA, devote a chapter to sources of data. When discussing the *Northwest Executive Compensation Survey*, the authors write: "We haven't seen any compensation survey with this much detail." Also, unlike many compensation surveys that cost in the thousands of dollars, this one sells for \$595.

Milliman, founded in 1947, is an executive compensation consulting firm based in Seattle. With nearly \$1 billion in annual revenues, the firm is also known for its actuarial and employee benefits expertise. *The 2013-2014 Milliman NW Executive Compensation Survey*, the company's 29th edition, covers 288 companies in Oregon, Washington, and Idaho. There are data on CEOs as well as 18 other job titles, categorized by company size and industry. Since Milliman does about 20 other executive surveys on a variety of topics, "they have an inside track with companies, many of whom are reluctant to provide compensation data," says Larry Daniels, senior compensation consultant with Milliman.

The following are some of the executive positions that are surveyed and tabulated:

- Chief executive officer;
- President;
- Chief financial officer;

- Chief information officer;
- Top marketing executive;
- Top sales executive;
- Top manufacturing executive;
- Top HR executive; and
- General counsel.

**Using the survey.** For business appraisers in the Pacific Northwest, of course, the data are attractive because they are region-specific. Recently, I was asked to value a real estate investment company in Portland, Ore. Since no industry category lined up with it, I chose to use the composite of privately held companies in the \$0-to-\$30 million range. I saw that the 50th percentile compensation was \$168,000, significantly lower than my subject. I also looked at the list of company perks listed on page 62 of the survey and determined that my subject company CEO enjoyed a wider array of perks. Based on these data and other subjective factors, I reduced the compensation of my subject by about \$80,000, which added another \$400,000 to its value.

But where does that leave appraisers in other regions? Daniels argues that other factors weigh much more heavily than geography. "We think executive compensation is a national market," he says. "The variation is more about industry and size of company."

For example, on page 12 of the survey, median privately held CEO cash compensation for companies in the \$0-to-\$30 million category is \$168,600 (see the exhibit). Now look at companies in the \$250 million-to-\$1 billion range, and you'll see that compensation more than doubles to nearly \$445,000. Daniels believes that regional differences would not be nearly as wide. In reality, an executive in Portland would probably not need a cost-of-living adjustment

to live in most cities in the U.S., with notable exceptions including Los Angeles, San Francisco, Boston, and New York City.

Many online calculators can convert costs from one city to another. For example, a calculator on CNN's website ([money.cnn.com/calculator/pf/cost-of-living](http://money.cnn.com/calculator/pf/cost-of-living)) indicates that a person earning \$200,000 per year in Portland would need to earn about \$379,000 in Manhattan, N.Y., to have an equal standard of living. Salary differential studies can also be used for adjustments, such as the U.S. Geographic Salary Differential study from Mercer ([imercer.com](http://imercer.com)).

The problem with calculators and average adjustments is that they sometimes defy common sense. A person earning \$200,000 in Portland can probably afford to buy a four-bedroom house in the best part of town. A person earning \$379,000 probably can't afford to live in Manhattan, certainly not at the same standard of living.

As a result, while it may not be best to try to adapt regional data such as Milliman to one of America's big expensive cities, it's probably not necessary to adjust it for any place else.

Both the *Milliman NW Executive Compensation Survey* and *Reasonable Compensation: Application and Analysis* are available at [www.bvresources.com/compensation](http://www.bvresources.com/compensation).

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ALL PARTICIPANTS	SALES / REVENUE OR ASSETS (Millions)				ANNUAL BASE SALARY (\$)				CASH BONUS (\$)					TOTAL CASH COMPENSATION (\$)			
	25th %tile	50th %tile	75th %tile	# of Cos.	Average (Mean)	25th %tile	50th %tile (Median)	75th %tile	# of Cos.	Average (Mean)	25th %tile	50th %tile (Median)	75th %tile	Average (Mean)	25th %tile	50th %tile (Median)	75th %tile
All Participants*	53.3	278.7	1,082.7	148	467,682	274,457	425,206	651,917	100	573,144	86,931	200,138	758,775	884,942	324,563	559,084	1,148,749
0.0 to 30.0	7.9	24.8	79.3	12	288,293	188,293	275,293	370,293	8	45,875	15,875	35,875	56,875	288,293	188,293	275,293	370,293
30.1 to 100.0	46.1	47.2	58.3	28	288,133	188,133	288,133	388,133	18	107,280	33,280	62,875	112,125	288,133	188,133	288,133	388,133
100.1 to 250.0	117.3	196.2	787.2	28	288,214	288,214	288,214	288,214	12	227,760	88,494	188,133	288,214	288,214	288,214	288,214	288,214
250.1 to 1,000.0	287.1	408.8	751.0	40	518,757	425,757	478,757	628,757	28	288,134	118,140	247,480	578,212	518,757	478,757	518,757	628,757
1,000+ Sales	1,817.7	2,222.7	8,888.0	40	871,487	581,487	788,757	982,757	28	1,128,288	348,840	588,133	1,288,618	1,817,757	1,288,618	1,288,618	1,817,757
Banking / Financial:																	
<1,000 Assets	138.4	284.4	471.0	47	238,244	178,244	228,244	287,133	38	78,244	21,244	37,133	78,244	238,244	178,244	228,244	287,133
>1,000 Assets	1,128.2	1,222.7	8,888.0	28	452,217	288,217	388,217	582,217	22	288,217	78,217	188,217	288,217	452,217	288,217	388,217	582,217

\* All Participants excludes Banking / Financial Industry.

PUBLICLY TRADED	ANNUAL BASE SALARY (\$)				CASH BONUS (\$)					TOTAL CASH COMPENSATION (\$)				
	Company Sales/Revenue (\$Millions)	# of Cos.	Average (Mean)	25th Percentile	50th %tile (Median)	75th Percentile	# of Cos.	Average (Mean)	25th Percentile	50th %tile (Median)	75th Percentile	Average (Mean)	25th Percentile	50th %tile (Median)
0.0 to 30.0	12	288,134	288,134	288,134	288,134	8	81,760	8,760	17,888	88,888	213,888	248,888	248,888	288,134
30.1 to 100.0	11	288,171	217,288	248,288	488,178	8	107,888	88,171	188,288	238,144	488,288	417,278	448,288	588,288
100.1 to 250.0	11	428,874	331,148	348,288	512,211	8	282,488	188,288	248,214	487,244	688,178	412,888	588,288	688,288
250.1 to 1,000.0	24	521,888	488,288	488,288	628,288	18	588,471	288,214	387,288	717,288	888,214	587,187	788,288	1,288,214
1,000+ Sales	34	848,148	688,171	788,134	888,288	32	1,288,488	877,828	917,288	1,418,628	2,088,212	1,788,288	1,888,288	2,178,288
Banking / Financial:														
<1,000 Assets	21	238,874	188,288	218,288	288,288	18	71,217	23,288	48,288	88,288	287,277	288,174	238,288	287,288
>1,000 Assets	12	488,288	388,288	478,288	588,288	18	888,288	488,288	588,288	788,288	888,288	487,288	688,288	1,288,288

PRIVATELY HELD	ANNUAL BASE SALARY (\$)				CASH BONUS (\$)					TOTAL CASH COMPENSATION (\$)				
	Company Sales/Revenue (\$Millions)	# of Cos.	Average (Mean)	25th Percentile	50th %tile (Median)	75th Percentile	# of Cos.	Average (Mean)	25th Percentile	50th %tile (Median)	75th Percentile	Average (Mean)	25th Percentile	50th %tile (Median)
0.0 to 30.0	10	178,212	148,288	188,288	188,412	8	84	84	84	84	188,171	188,288	188,288	218,288
30.1 to 100.0	15	218,288	178,288	288,288	288,288	8	82,842	28,288	78,288	88,418	247,188	178,288	248,788	278,288
100.1 to 250.0	9	288,288	248,288	288,148	512,211	3	84	84	84	84	278,288	248,288	248,131	512,211
250.1 to 1,000.0	18	488,288	377,288	448,212	628,288	18	188,212	84,212	88,212	182,288	387,288	488,444	588,212	647,288
1,000+ Sales	8	628,288	471,212	528,288	788,212	7	84	84	84	84	648,178	487,138	588,288	782,488
Banking / Financial:														
<1,000 Assets	48	238,788	177,278	217,288	288,212	28	78,788	22,788	88,212	88,288	232,488	188,788	238,278	248,788
>1,000 Assets	12	488,212	377,288	448,212	628,212	18	188,212	88,212	88,212	182,288	387,288	488,444	588,212	647,288

# COMPENSATION

2013 - 2014 Northwest  
**EXECUTIVE COMPENSATION SURVEY**

of Privately Held Companies  
and Publicly Traded Companies

**29th EDITION**

Effective date of data: August 2013 (for most recent period)  
Publication date: December 2013

**Milliman**

## 2013-2014 Milliman NW Executive Compensation Survey

(Annual Report - PDF delivered via email)

The 29th edition of this *Survey* provides unique reference information regarding executive compensation practices within Northwest companies, including Washington, Oregon and Idaho. It is the only comprehensive source of data on executive compensation, benefits, and perquisites within the Northwest, with data compiled from 220+ companies!

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