



CASE HISTORY – EXPERT WITNESS & SOFTWARE / BUSINESS VALUATION KEY ROLE IN COURT DECISION

BACKGROUND: Provider Solutions Corporation (PSC) and affiliated entities filed an assignment for the benefit of its creditors in Hillsborough County, Florida in 2002. PSC is a software centric application service provider (ASP) delivering functionality specific to the home health care provider market. PSC operates their proprietary software on a central server located in Tampa, FL supporting 250 clients and 1,000 users throughout the U. S. Michael Moecker, of Michael Moecker & Associates, served as Assignee in this proceeding. Provider Acquisition, LLC presented Assignee with an offer to acquire PSC as a going concern. Additionally, Provider Acquisition, LLC's offer proposed to fund any operating shortfall until August 15, 2002. If the court approved the sale, the proceeds would satisfy approximately 20% of the approved creditor claims.

The Assignee engaged Edwin G. Rice, of Glenn, Rasmussen, Fogarty & Hooker, P.A., as legal counsel. Filings were made to sell all assets of Assignors (PSC related) to Provider Acquisition, LLC. A court date of August 19, 2002 was set to hear arguments. Representing Provider Acquisition, LLC, the buyer, was attorney Larry Schence. Assignee foresaw the possibility that objections to the sale could arise. In the event the court denied the sale, a lack of operating funds would force PSC to immediately terminate all employees and cease operations as a going concern. If this were to occur values would severely decline, reducing proceeds available to be distributed to creditors. To mitigate the risk, Assignee elected to secure an independent appraisal of PSC's intangible assets (proprietary software) and PSC as a going concern. Additionally, the individual selected to craft the appraisal had to possess sufficient credentials to insure courts acceptance as an expert witness.

ACTION TAKEN: The Assignee engaged Nelson Consulting to perform an independent appraisal of the fair market value of PSC's intangible assets and a valuation of the company as a going concern. It was agreed that John Nelson, President of Nelson Consulting, would perform the appraisal. Additionally, John would testify as an expert witness. Best practices were employed to determine fair market values. The findings were presented in a twenty-two-page document titled Valuation of PSC Intangibles and PSC as a Going Concern (Valuation). John Nelson determined that 85% of PSC's value was comprised of proprietary software, owned by PSC. Furthermore, the Provider Acquisition, LLC offer exceeded the independent appraised value of PSC as a going concern by 22%, supporting reasonability of the offer.

At a hearing on August 19, 2002, John Nelson was presented by Edwin G. Rice of Glenn, Rasmussen, Fogarty & Hooker, P.A. as the Assignee's expert witness and the author of the Valuation. Following strenuous objections by opposing counsel, the court approved John Nelson to serve as an expert witness. Mr. Nelson presented the court with his Valuation findings related to intangibles and PSC, the business. Aggressive challenges mounted by opposing counsel ensued but Mr. Nelson's Valuation report was accepted by the court and entered into evidence as reasonable and valid.



OUTCOME: The court approved the sale of PSC to Provider Acquisition, LLC under the terms presented. Larry Hyman, of Michael Moecker & Associates, said, “Without John’s expert testimony and independent appraisal I don’t believe the court would have approved the sale.” Edwin G. Rice, of Glenn, Rassmussen, Fogarty & Hooker, P.A., and legal counsel to the Assignee advises, “John Nelson’s expert testimony and Valuation was crucial to the courts approval of the sale. Without his thoughtful Valuation and expert witness testimony the sale certainly would not have been approved.”