

EXPERT WITNESS MAKES A SPLASH IN HOTEL CASE

Submitted by Susan Kurzweil

Recently, one of the engineering program's valuation specialists qualified as an expert witness in tax court, and the decision that has just been released was entered as a win for the government. In *Koblick v. Comm.*, T.C. Memo 2006-63, filed April 3, 2006, the sole issue before the court was valuation of closely held stock donated to a charitable organization. Valuation Specialist Susan Kurzweil of Team 1862 in Independence, OH, valued the minority (45%), non-marketable stock interest.

The corporation owned a unique asset—an underwater hotel known as "Jules Undersea Lodge (JUL)" submersed in a lagoon near Key Largo, FL. JUL was an underwater habitat available for overnight guests who must be certified scuba divers to access accommodations at the lodge. Built in the 1970's, it was originally an undersea laboratory for ocean research, holding five divers for up to two weeks at depths of 100 feet. In the 1980's it was renovated for use as a two bedroom hotel suite.

To value the asset itself, Timothy Maher, Attorney of the Office of Chief Counsel, hired an outside expert. Captain E.S. Geary was a former Coast Guard Captain and an Accredited Senior Appraiser of the American Society of Appraisers, specializing in marine vessels. Using that asset value, the Valuation Specialist then valued the corporate stock that was donated. Susan is an Accredited Member of the ASA and a CPA. She fully complied with both USPAP and the Federal Rules of Evidence in the preparation of her appraisal report. Although this was her first court appearance, the court found her qualified as an expert witness.

Susan concluded that both minority and lack of marketability discounts were appropriate. The taxpayer's position was that, although they owned only 45% of the total stock, it should be valued as a controlling interest and not a minority interest. They felt that it was controlling because the three shareholders acted together in donating their stock, resulting in 100% of the corporate stock being received by the charitable organization. Judge Goeké agreed with the government that a minority discount was appropriate. Although the Judge's opinion applied a lesser discount than Susan had recommended, the result was full sustention of the statutory notice, and the decision was "entered for the respondent".

Factors crucial to the success of the case: all other case work was suspended so the only focus was this case; ability to meet with the management of the corporation and visit the site; being prepared for trial with practices of direct and cross-exam testimony; working with a good attorney; and having a supportive manager and team to assist with research, editing, and moral support.

