

## **RECENT COURT DECISION AFFIRMS A BROADER SCOPE FOR DISCOUNTS**

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Helfman v. Johnson - Minnesota Court of Appeals, A08-0396, February 24, 2009  
Hennepin County District Court, File No. 27-CV-06-2578

The Minnesota Court of Appeals affirmed the trial court's decision to apply a 24.6% discount to the undiscounted value of a closely held title insurance company in a fair value determination for a minority shareholder buyout.

The appellant (a minority shareholder) argued that the district court erred in applying a discount to the value of the corporation stating that application of a minority shareholder discount (and a lack of marketability discount) in the context of a court-ordered buyout is improper because the legislature specifically protects minority shareholders from being unfairly prejudiced (Minn. Stat. §302A.751).

Ultimately, the Minnesota Court of Appeals affirmed the trial court's position that the applied discount was not related to minority shareholder or marketability discounts. Rather, it clarified that the discount rate was applied in order to prevent the appellant from receiving a disproportionate amount of damages. In this case the following factors were considered:

1. there were no non-compete agreements in place;
2. there were no employment contracts binding employees; and
3. the market trend on the valuation date was strongly downward.

Considering the overall evidence and the equities, the district court determined that a 24.6% discount was appropriate due to a serious downward trend in the industry and the fact that the corporation's employees were able to leave and compete freely with the corporation.

The Helfman v. Johnson case appears not to have changed the basic premise in Minnesota that discounts for lack of control and lack of marketability still do not apply in a minority shareholder buyout. However, as case law changes and evolves over time, it is important to be aware of the current legal climate and the wide discretion that judges have in "Fair Value" cases through their rulings, which could affect the outcome of a case. The Helfman v. Johnson case demonstrates that, in shareholder disputes, the court system does not narrowly define discounts as strictly lack of control or lack of marketability discounts. This ruling affirms that appraisers may consider other factors applicable to a valuation problem as there may be situations in which a business is subject to additional risk and other kinds of discounts can be justified.