

EXHIBIT 18

INTELLECTUAL PROPERTY

VALUATION,
EXPLOITATION,
AND
INFRINGEMENT
DAMAGES

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CHAPTER 10

INCOME APPROACH—QUANTIFYING THE ECONOMIC BENEFIT

10.1 MARKET VALUE EQUALS THE PRESENT VALUE OF THE FUTURE ECONOMIC BENEFITS OF OWNERSHIP

From Chapter 7 the reader will recall that the focus of this book is the estimation of market value. Chapters 8 and 9 discussed how to develop indications of market value by the cost and market approaches. This important chapter presents the income approach to estimating market value, which has been defined as “the present value of the future economic benefits of ownership.” This definition itself indicates the direction of this discussion. The reader will recall the discussion of investment principles in Chapter 2 and the present value calculations that are the core of that subject. A calculation of the present value of future economic benefits therefore requires us to develop three primary inputs:

- The economic benefit that can reasonably be expected from the exploitation of the property
- The pattern by which that economic benefit will be received
- An assumption as to the risk associated with realizing the estimated amount of economic benefit in the expected pattern.

If we have these three pieces of information, we can calculate present value. If this information comes from an analysis of the real marketplace, that present value equals market value. The arithmetic (calculating present value) is straightforward; the analysis necessary to develop the inputs (amount of benefit, pattern of income, and risk factors) can be extremely complex. The remaining sections of this chapter explore analysis techniques.

10.2 QUANTIFYING THE ECONOMIC BENEFIT

Estimating the economic benefits that can flow from the exploitation of intangible assets and/or intellectual property is one of the most difficult challenges in the application of the income approach.

In the discussions that follow, we often use the term “earnings” to represent the quantification of the economic benefit. It is therefore appropriate to preface the examples with our thoughts about the use of earnings as this measurement.

The mere existence of profit is not enough to justify company investments in intellectual property. Before creating, buying, or licensing intellectual property, a company must determine its contribution to the overall earnings of the enterprise in which it will be used. Earnings derived from operations must be of an amount, on a consistent basis, to