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**Case Name:** [Neil Smith and NTS, LLC v. Promontory Financial Group, LLC and Promontory Growth and Innovation, LLC](#)

**Case Conclusion:** April 2019

**Caption:** Delaware Court of Chancery, C.A. No. 11255-VCG

**Keywords:** Fair Value

**Industry:** Management Consulting

**Professionals:** [David G. Clarke, ASA](#)

Promontory Growth and Innovation, LLC (“PGI”) was a joint venture formed by Neil Smith and Eugene Ludwig to provide management consulting to financial service firms and other companies. After working together for several years, Mr. Smith elected to withdraw from PGI and be cashed out of his 50% interest in the company. PGI’s LLC agreement provided that Mr. Smith was entitled to receive his proportionate share of the “then going business value” of the PGI, determined under the assumption that Mr. Smith would no longer provides services to the company.

The Griffing Group was retained by plaintiffs’ counsel David A. Jenkins and Laurence V. Cronin of Smith Katzenstein & Jenkins LLP. David G. Clarke, ASA, a Managing Principal of the Griffing Group, submitted opening and rebuttal expert reports and testified at trial in September 2018.

The Court rejected two of the three valuation methods proffered by the experts for the two sides. Citing the volatility of PGI’s historical financial performance and the difficult of forecasting, the Court deemed unreliable the company-prepared financial projections that were the basis for Mr. Clarke’s discounted cash flow analysis and declined to use the method. The Court rejected the defendants’ expert’s asset-based valuation of PGI, stating that such an analysis was inappropriate for valuing a service business whose most important assets were intangible and difficult to value discretely.

Instead, the Court relied on a valuation method provided by Mr. Clarke under which he estimated the value of PGI based on the terms of an earlier proposal Mr. Smith made to surrender a portion of his equity interest in PGI in exchange for the forgiveness of loans made to him by PGI’s parent company. The Court relied on the framework of this method in making its final determination of the value of Mr. Smith’s interest.