

## **Turning the Tables: Attacking Valuation Experts in Equity Appeals**

**By:** Lee D. Winston, Gray Winston & Hart, Dallas, Texas and Tyler McCarty, McCreary, Veselka, Bragg & Allen, P.C., Round Rock, Texas

### **I. Introduction and Learning Objectives**

This session explores strategic and evidentiary issues surrounding valuation experts in equity appeals under uniformity and equal-and-uniform provisions. Drawing on live trial experience, statutory authority, and comparative state constitutional frameworks, the program aims to help practitioners and assessment professionals:

1. Deepen understanding of the constitutional and statutory bases for equity appeals.
2. Identify and evaluate common weaknesses in expert valuation testimony.
3. Apply generally accepted appraisal methods and techniques (“GAAM&T”) in litigation.
4. Analyze and apply recent case law developments affecting equality and uniformity claims.
5. Develop and demonstrate persuasive advocacy skills for attacking or defending valuation experts.

### **II. The Role of Expert Testimony in Equity Appeals**

#### **A. Expert Testimony as the Cornerstone of Proof**

Equity appeals hinge on demonstrating inequality of appraisal, not mere disagreement over market value. Expert testimony therefore serves as both the methodological foundation and the evidentiary bridge between comparable property data and constitutional argument.

#### **B. Legal Standards for Expert Admissibility**

Under *Daubert* and *Robinson*, experts must demonstrate reliability in their methodology, sufficient factual basis, and consistent application of accepted principles. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993); *E.I. du Pont de Nemours & Co., Inc. v. Robinson*, 923 S.W.2d 549 (Tex. 1995). Deficiencies in data selection, adjustments, or comparability analysis go directly to admissibility and credibility.

### **III. Anatomy of an Equity Appeal**

#### **A. Constitutional and Statutory Foundations**

The concept of “equal and uniform taxation” appears in nearly every state constitution.

- **California:** “Unless otherwise provided by this Constitution or the laws of the United States: (a) All property is taxable and shall be assessed at the same percentage of fair market value.” Cal. Const., art. XIII, § 1(a).
- **Georgia:** “. . . all taxation shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.” Ga. Const. Art. VII, Sec. 1, Para. III.
- **Ohio:** “Land and improvements thereon shall be taxed by uniform rule according to value[.]” Ohio Const., art. XII, § 2.
- **Oregon:** “[A]ll taxation shall be uniform on the same class of subjects within the territorial limits of the authority levying the tax.” Ore. Const., art. I, § 32.
- **Pennsylvania:** “All taxes shall be uniform, upon the same class of subjects, within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.” Pa. Const. art. VIII, § 1.
- **Tennessee:** “The ratio of assessment to value of property in each class or subclass shall be equal and uniform throughout the state[.]” Tenn. Const. art. II, § 28.
- **Texas:** “Taxation shall be equal and uniform.” Tex. Const. art. VIII, § 1(a).

It also appears in state statutes:

- **Georgia:** “The board shall see that all taxable property within the county is assessed and returned at its fair market value and that fair market values as between the individual taxpayers are fairly and justly equalized so that each taxpayer shall pay as nearly as possible only such taxpayer's proportionate share of taxes.” O.C.G.A. § 48-5-306(a).
- **Texas:** “The district court shall grant relief on the ground that a property is appraised unequally if: (3) the appraised value of the property exceeds the median appraised value of a reasonable number of comparable properties appropriately adjusted.” Tex. Tax Code § 42.26(a)(3).

## **B. Remedies and Application**

Uniformity challenges often parallel valuation appeals but are analytically distinct. In many states, the courts require you to first establish the Subject Property’s market value and compare that value with the value set by the assessor/appraisal district (e.g., ratio challenges). In several states like Texas, it is a bit more fluid—courts require evidence that the subject property’s appraised value deviates materially from a reasonable sample of comparable properties, adjusted for relevant factors.

### C. Key Case Law Developments

Recent cases reflect divergent judicial approaches:

- **California:** *Pacific Bell Telephone Co. v. County of Merced*, 109 Cal. App. 5th 844 (Cal. 2024) – Taxing utility property at a rate higher than common property does not violate uniformity.
- **Georgia:** *Gateway Pines Hahira, LP v. Lowndes Cnty. Bd. Of Tax Assessors*, 920 S.E.2d 140 (Ga. 2025) – Not unconstitutional to use the income approach to determine the FMV of property with low-income housing tax credits. Cannot use tax credits as income in *applying* income approach unless tax credits generate actual income to the record titleholder.
- **Kentucky:** *Lwaglvky 1 LLC v. Younger*, No. 2024-CA-0302-MR – assessing Walgreens at its contract rents, which ultimately results taxation two- and three-times above market rent, does not violate uniformity (uniformity applies to tax rates, not assessments).
- **Ohio:**
  - *Spirit Realty, LP v. Warren Cty. Bd. of Revision*, 2024-Ohio-4734 – Reappraising on a property’s most recent sale price does not *per se* violate equality and uniformity (“The system of taxation unfortunately will always have some inequality and nonuniformity attendant with such governmental function. It seems that perfect equality in taxation would be utopian, but yet, as a practicality, unattainable. We must satisfy ourselves with a principle of reason that practical equality is the standard to be applied in these matters, and this standard is satisfied when the tax system is free of systematic and intentional departures from this principle.” (citing *Meyer v. Cuyahoga Cty. Bd. of Revision*, 58 Ohio St.2d 328, 335 (1979))).
  - *Gillis v. Delaware Cty. Bd. of Revision*, 2024-Ohio-5669 – Ohio Constitution does not prescribe the mode of ascertaining uniformity (“[W]hile the constitution prescribes that all property shall be taxed by a uniform rule \* \* \* it does not prescribe the mode of ascertaining the taxable valuation of property, or the time as to which the value is to be determined.” (citing *Shotwell v. Moore*, 45 Ohio St. 632, 645)).
- **Oregon:** *Delta Air Lines, Inc. v. Dept. of Revenue*, 374 Or. 58 (2025) – assessing centrally assessed businesses (including intangibles) differently from locally assessed ones (who only get taxed on real and tangible property) does not violate uniformity.
- **New York:** *Tax Equity Now NY LLC v. City of New York*, 42 N.Y. 3d1\* – Court Permits Standing for Alleged Widespread Inequity

- **Texas:** *Texas Disposal Systems Landfill, Inc. v. Travis CAD*, 694 S.W.3d 752 (Tex. 2024) – Market value evidence admissible in equity appeals.

## IV. Where Experts Go Wrong

### A. Common Weaknesses

1. **Factual Errors or Omissions:** Misidentifying comparables or mischaracterizing physical characteristics.
2. **Inconsistency Across Methods:** Applying conflicting adjustments in cost, income, and sales approaches.
3. **Lack of Verification:** Reliance on hearsay or unverified market data.
4. **Unprofessional Demeanor:** Dismissiveness, bias, or “I said so” reasoning erodes credibility.
5. **USPAP Non-Compliance:** Record-keeping rule.

## V. Exposing Weaknesses in Expert Testimony

### A. Discovery and Deposition Strategy

- Subpoena prior reports or valuation work on similar properties.
- Examine geographic competency, inspection dates, and adherence to recognized appraisal standards.
- Use non-testifying experts to assist in crafting deposition and cross-examination questions.

### B. Cross-Examination Themes

- Confront internal contradictions across approaches to value.
- Highlight deviation from GAAM&T or USPAP.
- Emphasize factual inaccuracies or selective omission of data.
- Underscore demeanor and bias—without impugning personal reputation.

## VI. Defending the Expert

### A. Preparation and Transparency

Experts must be thoroughly prepared for *Daubert* or *Robinson* scrutiny. Transparency regarding data sources, assumptions, and reconciliation methods builds credibility.

## **B. Consistency as a Shield**

Consistency between report, deposition, and testimony prevents impeachment and strengthens persuasiveness.

## **C. Educating the Trier of Fact**

Effective experts teach the appraisal process, simplifying complex valuation theory for jurors and judges.

## **D. Rehearsal and Mock Examination**

Pre-trial practice helps experts anticipate lines of attack and present confidently under cross-examination.

## **VII. Tools and Techniques: GAAM&T and Authoritative References**

- IAAO Materials, *e.g.*, Standard on Valuation of Personal Property; Understanding Intangible Assets and Real Estate: A Guide for Real Property Valuation Professionals; Property Assessment Valuation 3<sup>rd</sup> Edition;
- The Appraisal of Real Estate 15<sup>th</sup> Edition (Appraisal Institute)
- The Dictionary of Real Estate Appraisal 7<sup>th</sup> Edition (Appraisal Institute)
- Uniform Standards of Professional Appraisal Practice (USPAP) (2024–2025 Edition)
- Valuing Machinery and Equipment, The Fundamentals of Appraising Machinery and Technical Assets (American Society of Appraisers)

These sources serve as both offensive and defensive tools in challenging or justifying methodology. Cross-examiners should be conversant with key definitions, standard practices, and required disclosures.

## **VIII. Recent Trends and National Perspectives**

The growing body of multi-state case law reveals a convergence toward functional equality—that is, achieving proportional fairness even where valuation methods differ. Courts increasingly tolerate flexible methodologies provided that outcome uniformity is demonstrated across comparable properties.

## **IX. Lessons from Live Trials**

Drawing on real-world experience, both presenters share case examples illustrating:

- How cross-examination exposed fatal analytical flaws in opposing appraisals.
- How expert credibility determined outcomes despite close factual disputes.
- Practical courtroom dynamics that influence judicial perception of appraisal evidence.

These lessons emphasize that while valuation may appear technical, credibility and coherence remain the decisive elements in equity appeals.

## **X. Conclusion**

An effective equity-appeal strategy requires not only substantive mastery of valuation methodology but also procedural precision in attacking or defending expert testimony. Practitioners should integrate GAAM&T knowledge, evidentiary rigor, and trial advocacy skills to ensure that the promise of *equal and uniform taxation* becomes a reality in practice.

## **XI. References**

1. Cal. Const., art. XIII, § 1(a).
2. Ga. Const. Art. VII, Sec. 1, Para. III.
3. Ohio Const., art. XII, § 2.
4. Ore. Const., art. I, § 32.
5. Pa. Const. art. VIII, § 1.
6. Tenn. Const. art. II, § 28.
7. Tex. Const. art. VIII, § 1(a).
8. O.C.G.A. § 48-5-306(a).
9. Tex. Tax Code § 42.26(a)(3).
10. *Pacific Bell Telephone Co. v. County of Merced*, 109 Cal. App. 5th 844 (Cal. 2024).
11. *Gateway Pines Hahira v. Lowndes Cty. Bd. of Tax Assessors*, 906 S.E.2d 421 (Ga. App. 2024).
12. *Lwaglvky 1 LLC v. Younger*, No. 2024-CA-0302-MR.
13. *Spirit Realty, LP v. Warren Cty. Bd. of Revision*, 2024-Ohio-4734.
14. *Meyer v. Cuyahoga Cty. Bd. of Revision*, 58 Ohio St.2d 328, 335 (1979).

15. *Gillis v. Delaware Cty. Bd. of Revision*, 2024-Ohio-5669.
16. *Shotwell v. Moore*, 45 Ohio St. 632, 645.
17. *Delta Air Lines, Inc. v. Dept. of Revenue*, 374 Or. 58 (2025).
18. *Tax Equity Now NY LLC v. City of New York*, 42 N.Y. 3d1\*.
19. *Texas Disposal Systems Landfill, Inc. v. Travis CAD*, 694 S.W.3d 752 (Tex. 2024).
20. Standard on Valuation of Personal Property (IAAO).
21. Understanding Intangible Assets and Real Estate: A Guide for Real Property Valuation Professionals (IAAO).
22. Property Assessment Valuation 3<sup>rd</sup> Edition (IAAO).
23. The Appraisal of Real Estate 15<sup>th</sup> Edition (Appraisal Institute).
24. The Dictionary of Real Estate Appraisal 7<sup>th</sup> Edition (Appraisal Institute).
25. Uniform Standards of Professional Appraisal Practice (USPAP) (2024–2025 Edition).
26. Valuing Machinery and Equipment, The Fundamentals of Appraising Machinery and Technical Assets (American Society of Appraisers).