Discounts, Discounts and Only Discounts
Tax Court Case Decision

"After agreement by the parties as to the fair market value of many assets of the estate, the issues for decision involve the percentage discounts that should be used for built-in capital gains taxes, for lack of control, and for lack of marketability relating to the estate's minority interests in two closely held family corporations [LRC and LSC]." The opposing appraisal positions and the Court's Decision are as follows:

	Estate's Expert	Respondent's Expert	Court's Decision
LRC			
Net asset value	$33,174,196	$33,174,196	$33,174,196
Net asset value of estate's 43.1% interest	$14,298,078	$14,298,078	$14,298,078
Less discounts for:			
Built-in capital gains taxes	17.4%	2.0%	17.4%
Lack of control	14.8%	10.0%	14.8%
Lack of marketability	36.0%	18.0%	25.0%
Opinion of FMV of estate's interest	$6,475,000	$10,069,886	$7,546,725

	Estate's Expert	Respondent's Expert	Court's Decision
LSC			
Net asset value	$52,845,562	$52,845,562	$52,845,562
Net asset value of estate's 22.96% interest	$12,133,341	$12,133,341	$12,133,341
Less discounts for:			
Built-in capital gains taxes	23.6%	8.0%	23.6%
Lack of control	11.9%	5.0%	11.9%
Lack of marketability	29.7%	10.0%	20.0%
Opinion of FMV of estate's interest	$5,748,000	$9,565,535	$6,530,790

This United States Tax Court case, *Estate of Marjorie DeGreeff Litchfield, Deceased, George B. Snell and Peter DeGreeff Jacobi, Coexecutors, Petitioners v. Commissioner of*

Internal Revenue, Respondent, (T.C. Memo. 2009-21, Filed January 29, 2009), contains a great deal of detail about the calculation and support for the three discounts, including data, studies, formulas, methodologies, etc.

This court case is a treasure chest containing a wealth of important information. The level of detail is extensive. As such, the Court's views, analyses, interpretations and opinions are extracted, mostly verbatim, and with edits, from the tax court opinion. Given the length of this article and to make it easier to understand all this important information, we have used a bulleted text format.

Background Summary

- The estate elected the October 17, 2001, alternate valuation date.
- As of the valuation date, LRC's assets consisted largely of farmland and marketable securities, and LRC also owned a subsidiary corporation that owned and operated a public grain elevator and that sold to farmers crop insurance and services such as pesticide and fertilizer applications.
- Per a stipulation of the parties, as of the valuation date LRC's assets, liabilities, and net asset value are listed below:

Assets:	**Fair Market Value**
Real estate	$22,671,055
Marketable securities	9,751,757
Mineral rights	319,942
Subsidiary	300,000
Grain inventory	244,122
Prepaid expenses	156,304
Machinery, equipment, and vehicles	132,782
Cash	39,414
Co-op dividends	31,970
Receivables	(25,062)
Liabilities	(448,088)
Net asset value	$33,174,196

- On January 1, 2000, LRC elected to convert from a C corporation to an S corporation.
- If before January 1, 2010 (10 years from the first day of the first taxable year for which LRC elected S corporation status), LRC sold assets that it owned before its January 1, 2000, S election, LRC would incur corporate-level tax on the sale of those assets.

- As of the valuation date, LSC's assets included blue-chip marketable securities (e.g., AT&T, DuPont, and IBM) as well as partnership and other equity investments.
- Per a stipulation of the parties, as of the valuation date, LSC's assets, liabilities, and net asset value are listed below:

Assets:	**Fair Market Value**
Marketable securities	$49,970,382
Cash	2,088,572
Equity investments	685,108
Short-term investments	100,000
Federal income tax receivable	1,500
Liabilities	(21,149)
Net asset value	$52,824,413

- LSC was a C corporation.
- As of the valuation date, LRC's $33,174,196 net asset value included $28,762,306 in built-in capital gains--86.7 percent of LRC's total net asset value, and $19,789,772 of which related to the farmland and real property LRC owned and $8,972,534 of which related to marketable securities LRC owned.
- As of the valuation date, LSC's $52,824,413 net asset value included $38,984,799 in built-in capital gains--73.8 percent of LSC's total net asset value.
- As of the valuation date, the capital gains tax rate applicable to LRC and to LSC was between 35.5 and 39.1 percent.

- The Court opined that the respondent had the burden of proof.
- As stated in Rev. Rul. 59-60, a hypothetical purchase price (i.e., fair market value) is to be determined through a commonsense application of all the relevant facts and circumstances with appreciation for the fact that valuation is an inexact science.
- We emphasize that resolution of valuation issues typically involves an approximation--by the parties, by the experts, and also by the courts--and that a court's valuation need not be tied to specific testimony or evidence if it is within the range of values supported by the evidence.
- With respect to stock in closely held real estate holding companies and investment companies such as LRC and LSC, the net asset valuation method is often accepted as the preferred method.
- The parties' experts apply discounts to LRC's and LSC's net asset values to reflect the substantial built-in capital gains taxes that, as of the valuation date, were associated with LRC's and LSC's appreciated assets.
- Knowledgeable buyers, however, also would negotiate discounts in the price of the stock to estimate, on the basis of current tax laws, the corporate capital gain tax liabilities due on that very same appreciation when the assets are sold or otherwise disposed of by the corporation.
- The parties' experts also apply discounts to LRC's and LSC's net asset values to take into account the estate's minority LRC and LSC stock interests and the lack of marketability of those interests.

- The minority interest or lack of control involves the inability to control corporate action, select management, determine timing and amounts of distributions, arrange financing, and make decisions about liquidation, merger, and asset sales.
- The lack of marketability is based primarily on the fact that there is no public market for LRC and LSC stock.
- The parties' experts are well qualified.

Capital Gains Tax

The Court's Decision

- In view of the asset valuation method employed by the parties and their experts, the highly appreciated nonoperating investment assets held by LRC and LSC as of the valuation date, and the C corporate tax liabilities to which LRC and LSC remain subject, we consider it likely that a willing buyer and a willing seller would negotiate and agree to significant discounts to net asset values relating to the estimated corporate capital gains taxes that would be due on the sale of LRC's and LSC's nonoperating assets.
- In Estate of Jelke v. Commissioner, 507 F.3d at 1331, the U.S. Court of Appeals for the Eleventh Circuit held that—using the net asset method to value closely held C corporation stock and regardless of whether a sale or liquidation of corporate investment assets was contemplated as of the valuation date—an assumption, as a matter of law, was appropriate that all corporate investment nonoperating assets would be liquidated on the valuation date and therefore that a built-in capital gains tax discount equal to 100 percent of the built-in capital gains taxes that would be due on a sale of the appreciated assets should be allowed. To the same effect see the opinion of the United States Court of Appeals for the Fifth Circuit in *Estate of Dunn v. Commissioner*, supra at 352-353.
- Herein, the estate's expert does not assume that LRC's and LSC's appreciated, nonoperating assets would be sold on the valuation date, and the estate does not ask us to apply a full dollar-for-dollar valuation discount for estimated built-in capital gains taxes. Therefore, we need not decide herein whether such an approach would be appropriate in another case where that argument is made.
- The estate's expert's assumptions relating to asset turnover estimates were based on more accurate data (namely, historical data, recent data, and conversations with management) than were respondent's expert's assumptions (namely, historical data and wrong assumptions as to management's plans).
- As indicated, the estate's expert and respondent's expert projected that a certain percentage of LRC's assets, using their turnover estimates, would be sold each year. The estate's expert's projections for LRC of an average asset holding period of 5 years and for LSC a holding period of 8 years were based on historical asset sales and conversations with LRC management about potential asset sales in later years.

- Under the estate's expert's turnover estimates for LRC (which we find credible and reasonable on the facts) LRC's assets owned on the valuation date are treated as sold during the period in which LRC will still owe corporate-level taxes on the sale of assets and therefore a built-in capital gains tax discount for LRC is appropriate.
- The facts herein are unique and not all S corporations will be allowed a built-in capital gains tax discount.
- Regarding LSC, the estate's expert's calculation of the built-in capital gains tax discount assumed a sale of assets in year 8 for ease of explanation. If the estate's expert had made his capital gains tax calculation using a sale of 12.5 percent of LSC assets in each of years 1 through 8 after the valuation date, his calculation would have been more consistent with his projection of asset turnover (i.e., 12.5 percent of assets sold in each year resulting in a final asset sale in year 8) and also would have resulted in a slightly increased built-in capital gains tax discount. We find no significant flaw in the estate's expert's simplification.
- Respondent's expert also projects that LRC's and LSC's corporate assets will be held for and sold off over a period of years, and respondent's expert discounts to present value, as of the valuation date, those estimated capital gains taxes, but respondent's expert does not take into account appreciation during the holding period that also likely will occur and that will be subject to taxes at the corporate level--what one expert has described as the tax-inefficient entity drag.
- On the facts presented to us, we believe that, as of the valuation date, a hypothetical buyer of LRC and LSC stock would attempt to estimate this extra corporate level tax burden on holding-period asset appreciation and would include the estimated cost or present value thereof in a built-in capital gains discount that would be negotiated between the hypothetical buyer and seller.
- One of respondent's own experts in another case acknowledges that he also would take into account holding-period asset appreciation in calculating appropriate valuation discounts to net asset value. See *Estate of Dailey v. Commissioner*, T.C. Memo. 2001-263. Also, in *Estate of Borgatello v. Commissioner*, supra, the parties included in their calculations of a built-in capital gains tax discount, and the Court included in its calculation thereof, estimated holding period asset appreciation and capital gains taxes thereon.
- We note that in *Estate of Jelke v. Commissioner*, T.C. Memo. 2005-131, the methodology used by the Court to calculate a discount for built-in capital gains taxes did not include holding-period asset appreciation. However, in Jelke the Court also emphasized the factual nature of the calculation of discounts for built-in capital gains taxes in a particular case and expressly stated that a valuation methodology used in one case was not binding on the Court in another case.
- **We accept the estate's expert's estimates of his built-in capital gains discounts for LRC and LSC.**

Estate's Expert

- In calculating his discounts for built-in capital gains taxes relating to LRC’s and LSC’s appreciated assets, the estate’s expert:
    - Reviewed minutes of LRC and LSC board meetings.
    - Reviewed the history of LRC’s and LSC’s asset sales.
    - Talked with LRC’s and LSC’s officers and board of directors about plans for the sale of LRC’s and LSC’s corporate assets.
    - Projected holding periods and sale dates for LRC’s and LSC’s appreciated assets.
    - Estimated appreciation for the assets during the holding periods until the estimated sale dates.
    - Calculated the capital gains taxes that were estimated to be due on the sale of the appreciated assets on the projected sale dates.
    - Discounted to present value the capital gains taxes calculated.
    - Subtracted the present value of the projected capital gains taxes from the net asset values of LRC and of LSC, respectively.
- For LRC, the estate’s expert’s asset turnover rate resulted in a projected average asset holding period of 5 years. As of the valuation date and using a capital gains tax rate of 38.8 percent, the present value of the estimated capital gains taxes that likely would be due on LRC’s assets was $5,616,085 (17.4 percent of LRC’s net asset value).
- For LSC, the estate’s expert’s 12.5-percent annual turnover rate resulted in a projected holding period of 8 years and estimated capital gains taxes of $32,995,835. As of the valuation date and using a capital gains tax rate of 35.32 percent, the present value of LSC’s estimated capital gains taxes that likely would be due on LSC’s assets was $12,455,695 (23.6 percent of LSC’s net asset value).

Respondent’s Expert

- In calculating his discounts for built-in capital gains taxes, for each asset class within LRC and LSC respondent’s expert:
    - Used turnover rate estimates based solely on historical asset sales by LRC and LSC.
    - Did not talk to LRC or LSC management.
    - Used his turnover rates to project asset holding periods.
    - Assumed a capital gains tax rate effective at the end of the holding period.
    - Calculated capital gains tax due on the assets.
    - Discounted back to present value the projected capital gains taxes.
    - Treated the present value of the capital gains taxes as a liability and subtracted them from net asset values.
- For LRC, respondent’s expert’s 1.86-percent asset turnover rate resulted in a projected asset holding period of 53.76 years.
- Because LRC, as a result of its S election, beginning in 2010 would no longer be required to pay corporate-level capital gains taxes, respondent’s expert did not include any capital gains taxes which were projected to be incurred beyond 2009.

- Respondent's expert multiplied a 38.8-percent capital gains tax rate by the $8,961,922 capital gains that, as of the valuation date, would be realized on an immediate sale of LRC's assets to yield a capital gains tax of $3,477,226. Respondent's expert then discounted a ratable portion of the $3,477,226 capital gains taxes per year for 9 years ($3,477,226 capital gains taxes divided by 53.76 years equals $64,681 due each year of the holding period) to yield a present value for the capital gains taxes of $358,116--an approximate 2-percent discount from LRC's net asset value.
- For LSC, respondent's expert's 3.45-percent asset turnover rate resulted in a projected asset holding period of 29 years. Respondent's expert multiplied a 35.32-percent capital gains tax rate by the $38,984,854 capital gains that, as of the valuation date, would be realized on an immediate sale of LSC's assets to produce capital gains taxes of $13,769,450. Respondent's expert then discounted a ratable portion of the $13,769,450 capital gains taxes per year for 29 years ($13,769,450 capital gains taxes divided by 29 years equals $474,809 due each year of the holding period) to yield a present value for the capital gains taxes of $4,107,147--an 8-percent discount from LSC's net asset value.

Lack of Control Discount

The Court's Decision

- With regard to the lack of control discount for LRC, we note that both experts, using slightly different data sets, calculated similar lack of control discounts for LRC's farmland and related assets (the estate's expert--15.7 percent; respondent's expert--15 percent) and that both experts used lack of control discounts for LRC's securities lower than the lack of control discounts for LRC's farmland and related assets.
- Both experts averaged their discounts for the farmland and for the securities to determine a lack of control discount for the estate's LRC stock interest. The estate's expert used a weighted average to account for the fact the LRC has significantly more farmland than securities. In contrast, respondent's expert used a straight average.
- If respondent's expert had accounted for LRC's unequal mix of assets by using a weighted average, respondent's expert's lack of control discount would have been more applicable to LRC (and would have been closer to the estate's expert's 14.8-percent lack of control discount). We conclude that the estate's expert's 14.8-percent lack of control discount for the estate's LRC minority stock interest is appropriate.
- With regard to the lack of control discount for the estate's LSC stock interest, respondent's expert applied the same percent discount as he applied to LRC's securities portfolio even though the estate's 22.96-percent stock interest in LSC was much smaller than the estate's 43.1-percent stock interest in LRC, whereas, the estate's expert used an increased lack of control discount for LSC (relative to

the same type of assets--securities) to take into account the estate's smaller stock interest in LSC.

- **We conclude that the estate's 11.9-percent lack of control discount for the estate's minority stock interest in LSC is appropriate.**

Estate's Expert

- To determine his lack of control discount for the estate's 43.1-percent stock interest in LRC, the estate's expert compared LRC's securities to closed-end funds and compared LRC's farmland and other assets to real estate investment trusts (REITs) and real estate limited partnerships (RELPs). The estate's expert reviewed observed lack of control discounts applied to closed-end fund stock sales as well as to sales of REIT and RELP interests.
- Closed-end funds are publicly traded corporations that, like LSC, invest in securities, pay dividends, and generally do not issue new shares of stock or redeem outstanding shares of stock.
- The estate's expert observed lack of control discounts for closed-end funds of 3.36 percent, with a median of 7.16 percent and a standard deviation of 17.73 percent. For REITs, lack of control discounts observed ranged from 0 to 38.1 percent over a 10-year period, with the average discount during the year before the valuation date of 25.5 percent. For RELPs, for lack of control and lack of marketability a combined mean discount of 25 percent and a range of 10 to 50 percent was observed.
- The estate's expert considered that a 43.1-percent interest holder would have some ability to force liquidation and to change LRC's policy and operation. The estate's expert considered LRC's current financial efficiency as measured by expenses to be similar to other investments of the same nature. However, the estate's expert considered LRC's historical returns to be substantially below those of other investments of a similar nature.
- The estate's expert assigned to each of the above factors a value between -1 and 1, where -1 represented poor investor rights and 1 represented excellent investor rights. The factors regarding ability to force liquidation, ability to change LRC's policy and operation, and financial efficiency were each assigned values of 0 reflecting average investor rights, and the factor regarding LRC's historical returns was assigned a value of -1, reflecting poor investor rights.
- Using a formula incorporating the observed lack of control discounts as well as the above factors relating to LRC (as represented by their average assigned values) and weighted for LRC's combined asset classes, the estate's expert calculated a 14.8-percent lack of control discount for the estate's 43.1-percent stock interest in LRC.
- In calculating his lack of control discount for the estate's 22.96-percent stock interest in LSC, the estate's expert compared LSC to closed-end funds and used the observed mean, median, and standard deviation for lack of control discounts relating to closed-end fund stock sales.
- The estate's expert considered that a 22.96-interest holder would have little ability to force liquidation or to change LSC's policies and operations. The estate's

expert also considered LSC's current financial efficiency and historical returns to be similar to what a 22.96-interest holder in LSC would expect on the basis of the behavior of comparable investments.

- The estate's expert assigned to each factor values as described above. Thus, the factors regarding ability to force liquidation and to change LSC's policy and operation were each assigned values of -.5 reflecting less favorable than average investor rights, and the factors regarding financial efficiency and historical returns were each assigned values of 0 reflecting average investor rights.
- Using the above formula, the estate's expert determined a lack of control discount for the estate's LSC stock interest, unweighted by asset class, of 12.23 percent. The estate's expert then reduced the unweighted lack of control discount to account for LSC's small percentage of cash and short-term investments, resulting in an 11.9-percent lack of control discount for the estate's 22.96-percent interest in LSC.

Respondent's Expert

- Regarding the lack of control and lack of marketability discounts, respondent's expert compared LRC and LSC with publicly traded entities, including those involving restricted stock, reviewed observed discounts applicable to the sale of interests in publicly traded entities, and, within a range of observed discounts that did not include the highest and lowest observed discounts, adjusted the discounts for LRC and LSC for factors specific to LRC and LSC.
- According to respondent's expert, a discount for lack of control generally is required only if the buyer intends to make changes to the operation of the corporation. Because respondent's expert considered LRC's investments as performing well, respondent's expert concluded that a hypothetical buyer would make few changes to the operation of LRC and therefore that a buyer would not expect a large discount for lack of control.
- In his analysis of LRC's marketable securities, respondent's expert, like the estate's expert, used closed-end fund data as a benchmark. However, because the standard deviation applicable to lack of control discounts for closed-end funds was more than 17 percent and the average discount was only 3.4 percent, respondent's expert "trimmed the mean", or eliminated from his review the top and bottom 10 percent of observed lack of control discounts for closed-end funds, resulting in a trimmed average lack of control discount for closed-end funds of 5.2 percent.
- Respondent's expert did not break down his discount analysis by asset class, as did the estate's expert. Instead, respondent's expert analyzed LRC's marketable securities (including cash and other equity investments) as a whole.
- Respondent's expert considered that a 43-percent interest holder in LRC would have an above average ability to force liquidation or to change LRC's policy and operation. However, as stated, respondent's expert also considered that any shareholder in LRC would place little value on control because a shareholder

would not desire to change operations. Further, respondent's expert considered that LRC's marketable securities yielded very good returns.

- Respondent's expert therefore concluded that a below-average lack of control discount of 5 percent was appropriate with regard to LRC's marketable securities.
- With regard to LRC's farmland and related assets, respondent's expert reviewed a variety of published data. Respondent's expert noted 17- to 20-percent lack of control discounts observed in takeovers of public real estate companies, as reported in *Mergerstat Review*. In respondent's expert's view, discounts relating to takeovers generally are higher than discounts for normal sales activity, and the lack of control discount applicable to LRC's farmland and related assets should be lower than discounts reported by *Mergerstat Review*.
- Respondent's expert determined a 15-percent discount for lack of control relating to LRC's farmland and related assets. Respondent's expert pointed out that he agreed with the estate's expert's valuation in principle (but not in application) and that the 15-percent discount respondent's expert used for LRC's farmland and related assets was similar to the 15.7-percent discount that the estate's expert derived for the same farm related assets of LRC. Even though LRC's farmland and related assets constituted the bulk of LRC's net asset value, respondent's expert averaged the two above discounts to determine his 10-percent lack of control discount for LRC (i.e., 5 percent for LRC's marketable securities plus 15 percent for LRC's farm-related assets divided by 2 equals 10 percent).
- To calculate a lack of control discount for LSC, respondent's expert again used closed-end fund data and a "trimmed mean" of 5.2 percent. Because the estate's 22.96-percent interest in LSC was the single largest block of stock ownership in LSC, because respondent's expert considers that a potential buyer would not want to change the management of LSC, and because LSC's returns have been good, respondent's expert concluded that a below-average lack of control discount of 5 percent was appropriate for the estate's interest in LSC. In essence, respondent's expert opined that a hypothetical buyer of a minority interest in a closely held family corporation that is performing well "would place no value on control" and therefore that only a nominal lack of control discount should be applied to the estate's LSC stock interest.

Lack of Marketability Discount

The Court's Decision

- With regard to the lack of marketability discounts for both LRC and LSC, we consider it appropriate to weigh the assets by class.
- We, however, regard the estate's expert's respective 36-percent and 29.7-percent lack of marketability discounts, particularly when combined with the 14.8- and 11.9-percent lack of control discounts we allow, to be high.
- The estate's expert used some outdated data relating to restricted stock discounts. His discounts are higher than marketability discounts reflected in benchmark studies that included all components of a lack of marketability discount.

- We also note that the estate's expert opined in another valuation report prepared for Federal gift tax purposes in March of 2000 that the estate's same 22.96-percent LSC minority stock interest was appropriately discounted for lack of marketability by 21.4 percent, significantly lower than the 29.7-percent lack of marketability discount he suggests herein and corroborative of the lack of marketability discount we conclude is appropriate.
- We conclude that discounts for lack of marketability of 25 percent and 20 percent should apply to the estate's respective LRC and LSC minority stock interests.

Estate's Expert

- In calculating his lack of marketability discount for the estate's minority stock interest in LRC, the estate's expert compared stock of LRC to restricted stock, including letter stock,[8] and reviewed observed lack of marketability discounts applied to restricted stock sales. The observed discounts ranged from 10 to 30 percent for larger companies with profitable operations and from 30 to 50 percent for small companies with characteristics indicative of a high degree of risk of loss.
- The estate's expert considered that restrictions on LRC's share transferability as well as LRC's built-in capital gains would result in a relatively higher discount for lack of marketability. The estate's expert also considered expectations of future cashflow, liquidity of underlying assets, and LRC's small size.
- The estate's expert assigned to each of the above factors values between -1 and 1. However, in his February 2007 report the estate's expert did not specify values by factor but instead gave average values for each class of assets that LRC owned. For example, LRC's cash received an average value of .25, LRC's marketable securities received an average value of -.125, and LRC's farmland and farmland-related assets received an average value of -.5.
- Using the formula described above, the estate's expert calculated a 36-percent lack of marketability discount applicable to the estate's LRC stock interest.
- In calculating his lack of marketability discount for the estate's minority stock interest in LSC, the estate's expert compared stock of LSC to restricted stock with observed marketability discounts ranging from 10 to 30 percent for larger firms with profitable operations and from 30 to 50 percent for small companies with characteristics indicative of a high degree of risk.
- The estate's expert considered restrictions on LSC's share transferability, expectations of future cashflow, and liquidity of LSC's underlying assets.
- The estate's expert assigned to each of the above factors values between -1 and 1. However, in his February 2007 report and similar to his treatment of LRC, the estate's expert did not specify values by factor but instead gave average values for each class of assets that LSC owned. For example, LSC's cash and short-term investments were assigned a total high average value of .5, LSC's marketable securities were assigned a total neutral average value of 0, and LSC's venture funds investments were assigned a low average value of -.25.

- The estate's expert's 29.7-percent lack of marketability discount for the estate's LSC stock interest is significantly higher than the 21.4-percent discount therefore that the same expert witness used in 2000 in valuing for Federal gift tax purposes the same interest.
- Using the formula described above, the estate's expert calculated a 29.7-percent lack of marketability discount for the estate's 22.96-percent LSC stock interest.

Respondent's Expert

- To determine his lack of marketability discount for the estate's LRC stock interest, respondent's expert compared stock of LRC to restricted stock and reviewed observed lack of marketability discounts applied to restricted stock sales (including three studies of restricted stock sales from the late 1990s that the estate's expert did not review). Respondent's expert determined a 25-percent average observed lack of marketability discount for restricted stock sales.
- Because sale prices for restricted stock may in his view include factors unrelated to marketability (e.g., liquidity of underlying assets and corporate distress), respondent's expert also reviewed private placement studies that compared discounts applied to registered, freely tradable private placements and unregistered, not freely tradable private placements.
- Respondent's expert considered the difference between the discounts applied to the two types of private placements to be indicative of a "true" discount for lack of marketability and determined a range of 7.23 to 17.6 percent in observed lack of marketability discounts for private placements.
- Respondent's expert then opined that three factors (LRC's dividend paying policy, the ability of a 43.1-percent interest holder in LRC to affect management, and the small likelihood that LRC would incur the cost of an initial public offering) suggested that a lack of marketability discount for the estate's interest in LRC should be below average.
- Respondent's expert opined that an additional five factors (the slight difficulty an investor would encounter in determining LRC's net asset value, LRC's likelihood of continued returns, LRC's low management fees, the holding period necessary for LRC to be able to sell farmland and related assets, and LRC's willingness to redeem stock but potential inability to do so due to taxes that would be due on redemption) suggested a marketability discount that was only average but that LRC's restrictions on stock transferability suggested an above-average lack of marketability discount.
- Using benchmarks established by restricted stock and private placement sales studies and adjusting for the above factors, respondent's expert determined that 18 percent was a reasonable below-average lack of marketability discount for the estate's shares of stock in LRC.
- To determine a lack of marketability discount for the estate's minority stock interest in LSC, respondent's expert reviewed the same restricted stock and private placement data referred to above. Because LSC's assets consisted mainly of marketable securities whose values were readily ascertainable and salable, respondent's expert opined that a lack of marketability discount should be average

or below average. Further, respondent's expert opined that LSC's policy of paying dividends, LSC's transparent financial conditions, LSC's long history of investments that provided returns, LSC's low management fees and competent management, the lack of formal legal restrictions on transferability of shares of stock, and the small likelihood that LSC would incur the cost of an initial public offering in the future all suggested that the lack of marketability discount for LSC should be below average.

- Respondent's expert concluded that 10 percent was a reasonable below-average lack of marketability discount to apply to the estate's shares of stock in LSC.