

ESOP litigants play by their own valuation rules, speakers say

BVWire Articles

August 05, 2020 04:00 AM EST

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Section: No. 215-1

Length: 398 words

Body

ABSTRACT

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FULL TEXT

Imagine if you were playing on a baseball team and the opposing players argue that you are violating the rules of soccer. That's what it's like when private parties and the Department of Labor challenge ESOP valuations, say speakers during a [recent BVR webinar](#). Plaintiffs play a very different valuation ballgame, which confounds experts who go up against them in a dispute involving allegations that an ESOP paid more than "fair market value" for stock of the sponsor company.

The webinar speakers, attorney **Richard Pearl** (McDermott Will & Emery LLP) and valuation expert and former ESOP trustee **Jim Joyner** (Integra Valuation Consulting LLC), discussed some fundamental issues under ERISA and valuation concepts that they believe plaintiffs, the DOL, and many courts "are just getting wrong." For example:

- ERISA does not require ESOP trustees to act like private-equity buyers;
- ERISA requires assessment of "fair market value," not some other standard of value such as investment value;
- Expert witnesses with extensive experience purchasing companies, but no experience in fair market value appraisals, have no place in ESOP litigation;
- ESOPs do not have to obtain "unfettered" control of the company; and
- Regulation by litigation and enforcement actions does not provide guidance to ESOP practitioners on ESOP transactions.

Making matters worse, many courts have been led into error, and the number of ESOPs has been declining recently. The situation has gotten to the point where various organizations, including the American Society of Appraisers (ASA), have filed amicus briefs in support of appraisers and trustees. The speakers discussed the [appeal regarding the Lee case](#) (*Lee v. Argent Trust Co.*), a private action that a district court dismissed. The ASA and National Center for Employee Ownership (NCEO) had filed amicus briefs on behalf of the defendants. After those amicus briefs were filed, the plaintiff voluntarily dismissed her appeal.

This issue of *BVWire* has more details on the opinion in the *Lee* case.

A recording of the webinar, Class-Action Litigation Involving ERISA/ESOP Valuation Issues, is available if you [click here](#) (purchase required unless you're a [BVR Training Passport](#) holder or subscriber to the [BVRResearch Pro](#) platform).

Load-Date: August 6, 2020

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