

Alert | Labor & Employment



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Unique Strategy in ERISA Class Action Results in Zero Liability to Defendants

In *Wema Hoover v. Brijon Management & Employee Leasing Services, et al.*, Case No. 3:14-cv-05786-MAS-DEA (D. N.J.), a former employee of Brijon Management & Employee Leasing Services, Inc. (Brijon) and a participant in the Employee Stock Ownership Plan (ESOP) sponsored by Brijon filed a class action complaint alleging that Brijon, its former Chief Executive Officer (CEO), and others violated ERISA when they approved the ESOP's sale of 100 percent of Brijon's stock to Defendant CarolBri, LLC (CarolBri), an entity partially owned by Brijon's former CEO, for an amount that plaintiff alleged was less than the fair market value of the stock.

The plaintiff's stock valuation expert claimed that the fair market value of Brijon's stock at the time of the sale was \$5.93 million. Defendants' expert opined that the amount the ESOP received for the stock actually exceeded the fair market value of Brijon's stock. Given that any liability rested, if at all, on the valuation of Brijon's stock, the parties agreed to a settlement in which the class and the parties would be bound by the findings of a neutral valuation expert who would be appointed as a Special Master by the court. The case would then be certified as a no opt-out class action under Rule 23(b)(1) and all claims of all class members would be extinguished.

After reviewing the submissions of the parties and their experts, the Special Master determined that the ESOP received at least fair market value for Brijon's stock. Those findings resulted in the release and dismissal of all individual and class claims asserted in the case with Defendants paying nothing to either the class members or to Plaintiff's counsel. The motion to approve the class action settlement, to certify the case as a no opt-out class action, and to dismiss with prejudice all claims was approved by the court in

October 2017, after it found that the settlement was fair, reasonable, and adequate under the circumstances.

Although this approach may not be suitable in all ESOP class action cases, ESOP class action cases often turn on the valuations performed of the plan sponsor or its stock and the parties may only dispute a couple of key valuation issues. In those circumstances, having a neutral stock valuation expert determine the fate of the case should be considered, as opposed to a federal judge who may have very limited experience with valuation issues and the complexities involved.

Greenberg Traurig represented the main defendants in the *Hoover* case. GT Shareholders Kristine Feher, Todd Wozniak, and Practice Group Attorney Lindsey Reagan Camp led the defense.*

Author

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