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Trachte Building Systems Case Shows How Employee-Stock-Ownership Plans Can Go Awry

Judge in 2013 Awarded $17 Million to Company and Employees Cheated in Firm's Sale

By RUTH SIMON

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Few lawsuits alleging faulty valuation of employee-stock-ownership plans ever make it to trial, because most are settled before then, attorneys say. Last year, though, a federal court awarded more than $17 million to Trachte Building Systems Inc. and to employees of the prefabricated-steel-buildings maker, whose stock-ownership plan was cheated in the company's 2007 sale, the judge ruled.

The judge's decision and the accompanying court record show how an employee-stock-ownership deal can go awry. In his June 2013 ruling, the judge said the deal was "orchestrated" to ensure that "no truly independent person would look out" for workers. Employees' shares were worthless by the end of 2008. (See related documents.)

"Questionable judgments were made in the valuation of Trachte without independent scrutiny," U.S. District Judge William M. Conley wrote in ruling on the case.

He ordered Trachte's owner at the time of the sale, Alliance Holdings Inc., Alliance's then-president and other defendants to repay workers for losses suffered by their employee-stock-ownership plan. The appraiser wasn't a defendant in the case.

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Judge Conley ruled that an employee-stock-ownership plan paid more than $8 million too much for shares of the company in a complicated transaction in 2007 that saddled the plan with debt—and instantly erased three-fourths of the value of workers' stock.

"Convince me why this a good idea," one skeptical employee said at a company meeting, according to a transcript of the event.

Trachte executives said the company wasn't allowed to negotiate the price of the deal and employees couldn't vote on it. And the outside firm hired to determine whether the deal was fair to employees wasn't allowed to do its own appraisal. Instead, it had to use a valuation reached by the same firm that increased its estimate of Trachte's equity by 11% in 2004 despite a 21% decline in earnings before interest, taxes, depreciation and amortization from a year earlier.

The defendants have agreed to a settlement that includes payments of more than $12 million, says R. Joseph Barton, a lawyer who represents Trachte employees. Charles Jackson, a lawyer for Alliance, said the judge "rejected claims that anyone who is currently on Alliance's management…was responsible for breaches of fiduciary duty." Efforts to reach lawyers for Alliance's president at the time of the deal were unsuccessful.

While the employees' stock still is worthless, business at Trachte is rebounding from a recession-induced slump. The number of employees has grown about 30% since 2010, and many of the benefits cut after the deal have been restored, said Jeffrey Burbach, who took over as the Sun Prairie, Wis., company's president in late 2010.

"Whatever value the company has for the ESOP beneficiaries will depend on how we can continue to improve the operations of the company," he said.
