VEDDER PRICE

Employee Benefits Briefing

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VEDDER PRICE DEFEATS ERISA CLASS ACTION LAWSUIT

In a stunning victory for corporations, a federal district court in Chicago dismissed an ERISA class action lawsuit brought by employee participants in an employee stock ownership plan (ESOP) against their employer Amsted Industries, Inc. and the plan trustee LaSalle Bank. The court, ruling on a lawsuit brought in the midst of the Enron and other corporate scandals, held that employee claims that totaled more than $160 million against Amsted, individual directors and officers and LaSalle Bank were completely unfounded. Rather, the court ruled that Amsted and the ESOP trustee acted prudently and in accordance with the highest fiduciary standards regarding Amsted's purchase of another company, in evaluating Amsted's share price for redemption purposes and in dealing with a liquidity crisis that occurred when employees began to leave Amsted in unprecedented numbers.

> ***"Vedder Price attorneys Dick Schnadig, Mike Cleveland, Chuck Wolf and Alison Maki represented Amsted. According to Dick Schnadig, 'this is a case where the company, its Advisors and its Board of Directors did the right thing. Jobs were saved and justice was done.'"***

Background

Amsted, a manufacturer of industrial products, is wholly owned through an ESOP. The claims put forward by the plaintiff class focused on three corporate activities: Amsted's purchase of Varlen Corporation in 1999, Amsted's assessment of the obligation to repurchase shares of ESOP stock at the time that an employee retired, and the valuation of Amsted stock by the ESOP Trustee, LaSalle Bank.

Varlen Acquisition

Varlen Corporation was acquired by Amsted on August 16, 1999 at a cost of $42.00 per share, after an initial offer of $33 per share was rejected by Varlen's Board. Amsted obtained a $1 billion loan from Citibank to finance the acquisition. The plaintiff class maintained that Amsted did not sufficiently weigh the impact of the acquisition on its financial health and, especially, any impact on Amsted's ability to repurchase ESOP shares.

Stock Valuation

LaSalle had retained Duff & Phelps—one of the premier ESOP valuation firms in the country—to value the ESOP stock. On October 29, 1999, just after the Varlen acquisition, Duff & Phelps valued Amsted stock at $184.41 per share, an all-time high. At the time, the ESOP permitted employees to request a lump-sum payment for their vested shares upon termination of employment for any reason and without regard to satisfaction of age or other criteria. The annual valuation determined the value of a departing employee's redemption payout.

Following the 1999 annual stock valuation, ESOP distribution requests surpassed expected turnover rates predicted by Amsted. As the number of departing employees increased, Amsted's repurchase obligation climbed dramatically. In response, in April and July 2000, Amsted's Board of Directors amended the ESOP plan to eliminate lump-sum payouts, installing a 5-year payment plan. Additionally, the ESOP was amended to limit payouts to employees who met certain age and years of service standards and to provide that share valuations were to be performed quarterly rather than annually. By the time of the next valuation of Amsted stock in September 2000, the share value had fallen from $184.41 to $89.87.

The class action lawsuit followed this chain of events. Plaintiffs' expert witness calculated damages to the class from the decline of the value of Amsted stock at between $160,000,000 and $330,000,000.

Summary Judgment

Senior Judge James B. Moran of the U.S. District Court for the Northern District of Illinois held that the defendants did not violate ERISA's prudent person standard in any of the challenged actions. While the acquisition of Varlen created significant debt for the company, Judge Moran found that the acquisition in and of itself was not the cause of subsequent cash flow problems. Amsted had allocated $200 million for the repurchase of ESOP shares—"far more than historically necessary." The Court also held that, while the plaintiffs may have been "disappointed" by the company's earnings or by subsequent valuations of the ESOP stock, there was neither wrongdoing nor self-dealing on the part of the company or the Trustee. Moreover, the plaintiffs failed to show that the Varlen acquisition or Amsted's planning for its repurchase obligation had contributed to the decline in value of Amsted stock.