

DISTRICT COURT UPHOLDS PLAN ADMINISTRATOR'S USE OF COVID SPECIAL VALUATION DATE

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Behan Brothers, Inc. (the "Company") sponsored the Behan Brothers, Inc. Retirement Plan (the "Plan"). The Plan was a profit sharing plan that provided for pooled investments, rather than allowing each participant to direct the investment of his or her own account. The Plan's assets and participants' accounts were generally valued once a year on December 31. The annual valuation typically took several months to complete. In response to significant market volatility in early 2020 due to the COVID pandemic, the Plan's administrator elected to implement a special valuation date as of April 30, 2020. The Plan document allowed the Plan's administrator to declare a special valuation date in extraordinary circumstances, such as where there is a significant change in economic conditions or the market value of the Plan's assets. It also included *Firestone* language granting broad general discretionary authority to the administrator in administering the Plan and interpreting the Plan's terms.

Three retired employees who retired in 2018 requested to receive a distribution from the Plan based on the December 31, 2019 valuation date. When the administrator subsequently elected to implement the April 30, 2020 special valuation date and to process the requested distributions using the special valuation date rather than December 31, 2019, the retired employees brought suit.

In denying the former employees' claim for benefits, the district court held that the administrator's decision to implement a special valuation date in response to the significant market volatility at the outset of the COVID pandemic was reasonable. Had the administrator continued to use the traditional December 31 valuation date, other participants' would have borne the losses incurred by the former employees' accounts from December 31, 2019 to April 30, 2020. For similar reasons, the district court also rejected the former employees' breach of fiduciary duty claims.

Virtually every ERISA plan includes *Firestone* language providing that the administrator has broad discretionary authority in administering and interpreting the plan, the effect of which is that a court reviewing an administrator's decision will apply a deferential arbitrary and capricious standard of review. However, sponsors of employee stock ownership plans, profit sharing or money purchase plans, which are not valued on a daily basis, should review their plan's document for purposes of

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whether the plan allows the plan's administrator to declare a special valuation date and, if so, in what circumstances.
(*Lipshires v. Behan Bros., Inc. Retirement Plan*; D.C.R.I., 2021).

