

COURT PROHIBITS SALE OF ESOP SHARES

Hodgson Russ Newsletter
August 31, 2016

Conco, Inc. (“Conco”), which was wholly owned by an employee stock ownership plan (“ESOP”) sponsored by Conco, filed a voluntary petition under Chapter 11 of the Bankruptcy Code. A plan of reorganization approved by the bankruptcy court on November 20, 2014 (the “Plan”) provided that holders of equity securities were required to retain their equity interest in Conco.

After the Plan was confirmed, a competitor of Conco offered to purchase all of the stock in Conco. The ESOP’s trustees refused to sell the stock owned by the ESOP, contending that a sale would violate the terms of the Plan. ESOP participants then brought an action on July 1, 2015 against Conco, Conco’s board of directors, the ESOP, and the ESOP’s trustees for breach of fiduciary duty, and for an injunction to remove the ESOP’s current trustees and naming one or more independent trustees.

To determine the existence of a potential breach of fiduciary duty, the bankruptcy case was reopened in November 2015 to determine whether the Plan prohibited the sale of stock in the Conco by the ESOP. After a hearing on the issue, the bankruptcy court ordered that the holders of equity securities in Conco were enjoined from selling, transferring, or otherwise divesting themselves of those equity securities until January 1, 2019. The ESOP participants appealed, but the district court affirmed the bankruptcy court’s decision, holding that the bankruptcy court did not abuse its discretion in concluding that the Plan prohibited a sale of Conco stock by the ESOP before January 1, 2019. *Harper v. Conco ESOP Trustees* (W.D. KY 2016)

Attorneys

Peter Bradley
Michael Flanagan
Richard Kaiser
Ryan Murphy

Practices & Industries

Employee Benefits

