Intact Management Liability | **Employee Stock Ownership Plan Claim Scenarios**

Please consider these claim scenarios in your ESOP organization. While they may seem extreme, claims such as these are a reality. Private Company D&O and Fiduciary coverage offered by Intact Management Liability can protect your organization from a wide range of ESOP exposures.

ESOP Creation - Breach of Fiduciary Duty

The founder of a private company created an ESOP to sell her ownership to the ESOP and retire.The ESOP paid over $35,000,000 for the founder's shares. The following year, the company lost a key customer and the value of the company's shares declined significantly. The ESOP participants sued the plan fiduciaries, including the founder, claimin that the share price was overvalued at the date of the ESOP creation. The ESOP participants alleged that, at the time of the ESOP creation, the founder knew that the key customer was likely to be lost in the coming year. A case such as this could potentially cost more than $500,000 in legal costs and upwards of $1,000,0000 in settlement costs.

ESOP Valuation – Conflict of Interest

The Department of Labor (DOL) alleged that the ESOP fiduciaries and the independent trustee breached their duties in selecting an unqualified advisor to conduct a share price valuation. The DOL found that the advisor lacked independence as it had done previous work for both the selling shareholder and the independent trustee. The DOL charged that the ESOP did not try to negotiate a lower purchase price from the selling shareholder. A case such as this could potentially cost more than $700,000 in legal costs and upwards of $1,000,0000 in settlement costs.

ESOP Share Sale – Fraudulent Valuation

The Department of Labor brought suit against a company, its CEO, and its COO alleging that both the CEO and COO sold shares to the ESOP for a grossly inflated per share amount due to a fraudulent appraisal that used aggressive projections that were not in line with past performance and improper comparisons to much more successful companies.

ESOP Value – ERISA Violations

Participants of an ESOP alleged the ESOP plan, and directors and officers of the company, engaged in breach of fiduciary duty and engaged in prohibited transactions in violation of Section 408 of ERISA. It was alleged that certain incentive agreements benefitting the former company president were excessive and that defendants breached their fiduciary duties in approving the incentive agreements. As part of the incentive agreement, the former president had been given a large number of shares, making him the largest owner of the ESOP. It was claimed that was to the detriment of the other ESOP participant employees as it diluted the value of the ESOP. The plaintiffs sought disgorgement of profits.

ESOP Value – DOL Investigation

The Department of Labor (DOL) completed an investigation accusing the former president of a company of undervaluing the stock when he sold his shares to the ESOP, resulting in a loss to the plan. The DOL was particularly aggressive after they discovered the president was the only person on both sides of the transaction, and used the same attorney for the purchase and the sale.

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