



Labor Department News Brief

U.S. Department of Labor | March 16, 2016

US Labor Department sues Cactus Feeders Inc., fiduciaries to the Employee Stock Ownership Plan to recover millions in stock overpayment

Date of Action: March 10, 2016

Type of Action: The U.S. Department of Labor filed a lawsuit against the following entities and individuals as fiduciaries to the Cactus Feeders Inc. Employee Stock Ownership Plan for causing the ESOP to pay tens of millions of dollars more than it should have paid for company stock:

- Cactus Feeders Inc.
- Lubbock National Bank
- Board Director Paul Engler
- Board Director Michael Engler
- Board Director Jack Rhoades
- Board Director Jerry Miller
- Board Director Eugene Leman
- ESOP Committee member Bradley Hastings
- ESOP Committee member Kevin Hazelwood
- ESOP Committee member Ronald Hargis

Allegations: The complaint alleges that Lubbock National Bank – the ESOP trustee – violated its fiduciary obligations under the [Employee Retirement Income Security Act of 1974](#), when it caused the ESOP to overpay for company stock. Additionally, the company as plan administrator and acting through its board of directors and designated ESOP committee members knew of the trustee’s breaches of duty but did nothing to stop them. The ESOP, which already owned 30 percent of the company stock, purchased the remaining 70 percent of the company stock for \$100 million. The purchase price, however, failed to include:

- Sufficient adjustments for warrants and stock options that when exercised would dilute the ESOP’s equity from 100 percent to 55 percent.
- Any adjustment for lack of marketability as the company remains a private entity.
- Any adjustments for an investors’ rights agreement that effectively allowed the selling shareholders to retain control over the company for a period of 15 years.

Resolution: The department seeks a court order requiring the fiduciaries to pay back all losses incurred by the ESOP when it overpaid for the company shares, not to violate ERISA in the future and to appoint and pay independent fiduciaries to administer the plan.

Quote: “Fiduciaries of an [Employee Stock Ownership Plan](#) must only act in the interests of that plan’s participants and beneficiaries. When fiduciaries consider the purchase of employer stock, in good faith they must consider the fair market value of what the plan is actually purchasing. Causing the ESOP to pay more than it should violates core fiduciary duties,” said Deborah Perry, director of the Dallas Regional Office of the department’s [Employee Benefits Security Administration](#), which investigated this case. “The department will take all actions necessary to make sure that an ESOP, when purchasing employer stock, pays only what that stock is worth and nothing more.”

Information: Headquartered in Amarillo, Texas, Cactus Feeders Inc. is reportedly the second largest cattle feeding enterprise in the country. Employers and workers can reach EBSA’s Dallas office at 972-850-4500 or

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toll-free at 866-444-3272 for help with problems relating to private-sector retirement and health plans. Additional information can be found at <http://www.dol.gov/ebsa>.

Court: Northern District of Texas, Amarillo Division

Civil Action Number: 2:16-cv-00049-J

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