



# ESOP LITIGATION

McDermott's attorneys have extensive experience litigating ESOP matters, defending clients in DOL investigations and IRS audits, and trying cases in federal court.

## HOW MCDERMOTT CAN HELP

- Our ESOP litigation lawyers are trial lawyers with extensive experience in benefits litigation at both the trial and appellate level
- We pride ourselves on novel and effective approaches to handling ESOP disputes.
- We have obtained precedent-setting IRS and Department of Labor rulings and exemptions and been involved in landmark ESOP litigation matters
- Our ESOP litigators are backed by a 35+ lawyer employee benefits practice
- Our ESOP practice has been involved in hundreds of transactions, including leveraged buyouts, mergers, acquisitions, and private equity deals
- Our ESOP litigation attorneys are members of boards and committees of national ESOP organizations, including the NCEO, the ESOP Association, Employee-Owned S Corporations of America, and regularly speak and present at national and regional ESOP conferences
- We have worked with nearly every major trustee and valuation advisor serving ESOPs
- We have deep industry experience and represent clients in ESOP matters that involve nearly every industry, including manufacturing, financial services, health care, education, retail, and construction

## COMMITMENT TO OUR CLIENTS

Our expectation is that exceptional service, when combined with our industry knowledge, will serve as a basis of a successful and mutually beneficial long-term relationship.

**McDermott  
Will & Emery**

[mwe.com](http://mwe.com)

## ACCOLADES AND RECOGNITION

- National Tier 1 rankings in the areas of Litigation – ERISA and Employee Benefits (ERISA) Law  
- *U.S. News - Best Law Firms 2019*
- "The combination of technical expertise and practical business approach allows them to provide support very efficiently."  
- *Chambers USA 2019*
- National recognition among the top firms in Employee Benefits and Executive Compensation for ERISA Litigation, Plan Design and Transactions  
- *Legal 500 US 2019*
- "The team has the resources to tackle any type of compensation and benefits issue arising in the US or abroad."  
- *Chambers USA 2019*
- National recognition among the top firms in the area of Employee Benefits & Executive Compensation  
- *Chambers USA 2019*
- "...they form a partnership with the client that ensures success."  
- *U.S. News - Best Law Firms 2019*



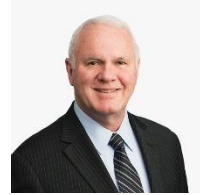
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## REPRESENTATIVE EXPERIENCE

### RECENT ESOP LITIGATION EXPERIENCE

- Currently defending clients in: *Appvion, Inc. Retirement Savings and Employee Stock Ownership Plan v. Buth, et al.* (E.D. Wisc.); *Brincefield v. Studdard, et al.* (D. Va.); *Fink v. Wilmington Trust, et al.* (D. Del.); *Nistra v. Reliance Trust Co.* (N.D. Ill.); *Woznicki v. Raydon Corp., et al.* (M.D. Fla.); and various Department of Labor investigations involving ESOPs
- Represent and have represented institutional and individual outside ESOP trustees, ESOP companies, and their directors, officers, and inside Fiduciaries, in class actions alleging breaches of ERISA fiduciary duties owed to ESOPs and ESOP participants
- Litigate ERISA prohibited-transaction provisions and exemptions, including questions of pleading and proof burdens, and first-impression questions of ERISA interpretation and relation between prohibited transactions and causes of action under ERISA
- Decades of experience with Department of Labor investigations and lawsuits
- Extensive experience with ESOP valuation challenges, including all aspects of expert discovery in valuation matters and issues of control adjustments, marketability adjustments, warrants, management incentive plans, stock options, employment agreements, post-transaction clawbacks, minority discounts, standards of value (e.g. fair market value, fair value, investment value), and various valuation methodologies
- Defended many ESOP cases involving \$200+ million
- Obtained summary judgment in ESOP fiduciary-breach action seeking \$875 million against the independent trustee; affirmed by the Sixth Circuit. *Pfeil v. State Street Bank* (N.D. Ill.)
- Obtained summary judgment for the trustee in an ERISA fiduciary-duty case involving ESOP assets. *In re Touch America Holdings Inc.* (D. Mont.)

## KEY CONTACTS



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## ABOUT MCDERMOTT

McDermott Will & Emery partners with leaders around the world to fuel missions, knock down barriers and shape markets. With 20 offices on three continents, our team works seamlessly across practices, industries and geographies to deliver highly effective—and often unexpected—solutions that propel success. More than 1,100 lawyers strong, we bring our personal passion and legal prowess to bear in every matter for our clients and the people they serve.

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We apply our deep knowledge of both legal and business considerations to help design and implement custom solutions that:

**Support Corporate Objectives |  
Optimize Opportunities | Minimize Risk**

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