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Directors Of Gov't Contractor To Pay \$3M to Settle ERISA Claims

By **Rachel Stone**

Law360 (September 27, 2021, 3:44 PM EDT) -- A class of current and former employees of government contractor Adams and Associates struck a deal requiring two company directors to pay \$3 million to end ERISA claims that the workers were shorted through an unfair stock sale, according to a memorandum in California federal court.

In a memorandum filed Friday, former employee Carol Foster and current worker Theo Foreman asked a San Francisco federal court to preliminarily approve the settlement in the Employee Retirement Income Security Act case. The deal would encompass a certified class of nearly 2,800 vested participants and beneficiaries in the company employee stock ownership plan, who had argued they overpaid for company stock in a 2012 sale implemented by a trustee who later pled guilty to stealing from other plans.

"The terms of the settlement resulted from hard-fought negotiations," the memorandum stated.

The parties officially reached their agreement Thursday after three rounds of video settlement conferences with U.S. Magistrate Judge Virginia K. DeMarchi, who proposed her own settlement as mediator in July. The parties also exchanged tens of thousands of pages during the discovery process, the memorandum stated.

In their bid for court approval of the agreement, Foster and Foreman noted Friday that only directors and officers Roy Adams and Daniel Norem, as well as the Daniel Norem Revocable Trust, would be responsible for the \$3 million settlement fund. Adams and Associates would not pay for the settlement or provide any other compensation as part of the deal, the memorandum stated.

The spouses of Adams and Norem, though originally named as defendants, were **let off the hook** in July 2020, when the court found they weren't fiduciaries and weren't shown to have actual or constructive knowledge of the transaction in dispute.

In response to the creation of the settlement fund and plan changes, the ESOP plan participants and beneficiaries would drop their claims against the Adams and Associates defendants, the memorandum stated.

Foster and Foreman also said they plan to ask the court for \$5,000 for each class representative.

Foster and Foreman first **brought their suit** against Adams and Associates, a government contractor that provides youth job training, in May 2018. The family-owned business had decided to become employee-owned as a way to still qualify for U.S. Department of Labor Job Corps contracts, the suit said.

The ESOP bought the Adams family's stock in September 2012 for \$33.5 million, but in the end the company lost the two contracts anyway, and market value of the stock tumbled to \$6.25 million by the end of the year, the suit claimed. The employees claimed the transaction price was based on unrealistic financial projections that could have been avoided had a prudent fiduciary conducted an appropriate investigation.

The workers had argued the directors also failed in their duty under ERISA to monitor the plan trustee, Alan Weissman, who had pled guilty in 2017 to theft and embezzlement that occurred at two other ESOPS. Had the directors done their due diligence, they would have chosen differently, according to the complaint. Weissman died in custody while serving a 30-month prison sentence.

In a July 2020 order narrowing the class' ERISA claims, U.S. Magistrate Judge Jacqueline Scott Corley had found that the ESOP participants' claims regarding the company's failure to monitor Weissman relied on a "circular argument." Yet the court declined to toss the claim on the grounds that a reasonable juror still could have concluded that Weissman breached his fiduciary duty by failing to provide certain information to a valuation firm.

In August 2019, the court **certified a class** of all vested participants in the ESOP from October 2012 onward, as well as their beneficiaries.

Counsel for the employees declined to comment Monday.

Counsel for the defendants did not immediately respond to requests for comment.

A representative from Adams and Associates did not immediately respond to requests for comment Monday.

The employees are represented by Daniel Feinberg of Feinberg Jackson Worthman & Wasow LLP and Vincent Cheng and by R. Joseph Barton of Block & Leviton LLP.

Adams and Associates and its directors are represented by Tad A. Devlin, Kate Elizabeth Collins, Vincent Scott Green and Katherine S. Catlos of Kaufman Dolowich & Voluck LLP.

The case is Foster et al. v. Adams and Associates Inc. et al., case number 3:18-cv-02723, in the U.S. District Court for the Northern District of California.

--Additional reporting by Hannah Albarazi. Editing by Roy LeBlanc.

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