

# Department of Labor Recovers \$22.5 million for ESOP

The plan's former trustee, Reliance Trust Company, settled a complaint following an investigation.

Reported by [NOAH ZUSS](#)

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The Department of Labor has recovered \$22.5 million from an employee stock plan's former trustee, Reliance Trust Co., for its overpayment for a recreational rental company's stock after [a federal judge in Arizona approved a consent judgment](#).

Senior U.S. District Judge Roslyn O. Silver, who presided over the lawsuit in U.S. District Court for the District of Arizona, compelled Reliance to pay the settlement to the RVR Employee Stock Ownership Plan, according to the consent judgment filed last week. The consent judgment directed Reliance to distribute recovered monies to the accounts of individuals who were participants in the plan as of May 28, 2014, or to individuals who were participants but have since closed their plan accounts.

Silver directed Reliance or its insurers to pay \$20,454,545 million—the settlement amount, within 30 days of the court's August 30 entry of the consent judgment, the [DOL stated in the press release](#). Charges against individual defendants in the case remain ongoing.

"The DOL has historically had special concerns about these plans and has focused from time to time on ESOP enforcement," says Drew Oringer, a partner in and general counsel at the Wagner Law Group, which is not involved in the litigation. "This settlement shows that the DOL continues to be active in this area."

The [DOL brought the lawsuit against Reliance](#) for alleged ERISA violations, claiming the trust company improperly facilitated an employee stock ownership transaction. Alleged fiduciary breaches stemmed from the overarching allegation that Reliance, as trustee, caused the ESOP to overpay by tens of millions of dollars the individual defendants for all of the then-outstanding stock of RVR, according to court documents.

The DOL's assistant secretary for employee benefits security, Lisa Gomez, admonished the defendants' actions and reminded fiduciaries of their obligations to ESOP participants in the press release announcing the settlement.

"When a trustee purchases stock on behalf of a retirement plan such as the RVR Employee Stock Ownership Plan, its first responsibility is to make sure that the plan's participants get a fair deal and don't pay more than the worth of the stock," Gomez stated. "Plan fiduciaries' duty of loyalty is owed to the plan's participants, not to sellers looking out for their own bottom line. When fiduciaries cut deals for the financial benefit of sellers at the expense of their employees, the Department of Labor will take appropriate action to ensure that plan participants get full value for their money."

For the 2021 plan year, the RVR ESOP held \$137 million in retirement assets for 204 participants, according to the latest Form 5500 data filed to the Department of Labor.

While the case included an ESOP, dismissing the retirement plan arrangement as useful for participants is unwise because, with the right conditions, "ESOPs can provide a fantastic opportunity for succession planning for business owners and for amassing potentially significant retirement savings for employees," said Douglas Neville, an ERISA attorney, officer and practice group leader at St. Louis-based law firm Greensfelder, Hemker & Gale PC, by email.

"Nevertheless, the Department of Labor has become increasingly aggressive in scrutinizing ESOP transactions throughout the last couple decades," he says. "This settlement is yet another example of the intensity and gravity of the DOL's scrutiny. DOL settlements involving ESOP transactions (large settlements in particular) illustrate the

importance of ensuring that ESOP fiduciaries engage in a prudent, arms-length process in negotiating such transactions and establishing the price at which ESOPs purchase employer stock.”

The consent order did not convince one observer of the legal grounds for the alleged fiduciary breaches the DOL brought in the lawsuit.

“The Department of Labor claimed in their lawsuit that the former owner’s shares were sold to employees in the ESOP at an inflated value, in a ‘pre-ordained, rushed process,’” says Daniel Aronowitz, the managing principal in Euclid Fiduciary, which is also not involved in the litigation, quoting the DOL’s complaint. “Based on our review of the public filings in this case, however, RVR retained a well-qualified, experienced financial adviser and high quality law firms to validate that the ESOP transaction was properly valued and complied with ERISA. They followed the best practices for an ESOP transaction and we did not see any validation of DOL’s claims of a ‘rubberstamped,’ ‘pre-ordained’ valuation.”

The active and amended complaint was *Martin J. Walsh v. Reliance Trust Company et al.*, brought earlier this year by then-Secretary of Labor Marty Walsh, while the consent judgment filing was updated to list acting Secretary of Labor Julie Su as the plaintiff.

Neither DOL representatives nor representatives for the Reliance Trust Co. returned a request for comment.

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**Tags**

[Department of Labor](#), [Employee Benefits Security Administration](#), [Employee Retirement Income Security Act](#), [Employee Stock Ownership Plan](#), [fiduciary breach](#), [Form 5500](#), [Lisa Gomez](#), [Plan Sponsors](#), [retirement plan lawsuit](#), [settlement](#)

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