

# ASA Blog

## [ASA Takes Important Legal Step to Protect ESOP Appraisers and Fiduciaries](#)

by Todd Paradis | Jul 18, 2018

The American Society of Appraisers (ASA) has filed an [amicus brief](#) in connection with the appeal of an employee stock ownership plan (ESOP) case, outlining the district court's appraisal-related errors and dangerous precedent set by the opinion.

Prepared on behalf of ASA by [McDermott Will & Emery](#), the brief was submitted to the United States Court of Appeals for the Fourth Circuit in the matter of [Brundle vs. Wilmington Trust](#).

The brief addressed three critical areas: (1) the Court's failure to apply the proper standard of review to the ESOP fiduciary's determination of adequate consideration, (2) the numerous flaws in the Court's damages assessment resulting from the adoption of flawed and incoherent appraisal analyses, and (3) clarification of the role independent appraisers fill in advising ESOP fiduciaries as to the proper valuation of company stock held by an ESOP.

The brief also explained how the court's decision ran contrary to applicable law and how the decision sets a dangerous precedent for future ESOP transactions by exposing every appraiser and fiduciary to potential litigation; as well as insight into the importance of using a qualified and credentialed appraiser who follows recognized appraisal standards.

"When it comes to legal matters requiring the use of valuation, it's crucial for all involved parties, including the courts, to fully understand the need for "qualified appraisers", as well as their credentials, the process involved to earn such and the organizations issuing them," said [Ken Pia Jr., ASA](#), who is National Partner-in-Charge of Business Valuation Services for [Marcum](#), one of the largest U.S. independent public accounting and advisory service firms.

International President, [Robert B. Morrison, ASA](#), added, "ASA takes very seriously our responsibility to advocate on behalf of members, the valuation profession, connected allied professionals and the public who rely on appraisals. Our organization continually works to protect their shared interests, as demonstrated by the filing of this brief, as well as to ensure that our members are objective, unbiased consultants of values.

The brief can be read in its entirety [here](#).