Tucker Ellis LLP

ESOP

Overview

Employee stock ownership plans – ESOPs – can be complicated, often involving multiple areas of law. Our ESOP Group uses an efficient team approach, working closely across disciplines to ensure a seamless delivery of services to our clients. Our practice includes significant depth in every aspect of a full-service ESOP practice – ERISA, tax, corporate finance, lending, securities regulation, fiduciary governance and litigation, labor and employment, restructuring and creditors' rights, estate planning, and mergers and acquisitions – making our practice the one-stop shop our ESOP clients need.

Because we understand the complexities of ESOPs, we can help business owners determine whether an ESOP is the right fit. We can help establish a simple ESOP – where stock will be redeemed from owners and allocated to employees over an extended period of time, or a more typical ESOP, formed as part of a significant financial transaction – where all or a substantial portion of an owner's interest is acquired by the ESOP. We address the complexities associated with this type of transaction from every angle – for owners and their companies, for ESOP trustees in buying or selling stock or assets, and for ESOP lenders. Our involvement extends over the life of an ESOP, handling the administrative questions and other issues that arise in the early stages of an ESOP, as well as later-stage issues, including repurchase liability and plan termination.

We know that an ESOP company needs more than legal counsel. It needs a key team of ESOP professionals, such as accountants, financial and tax advisors, lenders, investment bankers, administrators, valuation firms, and professional trustees or other independent fiduciaries. At Tucker Ellis, our relationships with these service providers are integral to helping our ESOP clients assemble the most effective team for their unique needs.

Ranked in Chambers USA in the area of Employee Benefits & Executive Compensation (Ohio), our practice garners appreciation from clients who remark that Tucker Ellis has "the bench strength to deal with a wide variety of issues." One interviewee says, "In addition to legal expertise in the very complex and difficult subject of ERISA and ESOP, the firm has expertise in trial work in this area and a very good approach to litigation."

Read the latest insights about ESOP on our ERISA Blog.

AREAS OF EMPHASIS

- ESOP formation
- Structuring complex leveraged purchase

- Acquisitions
- Compliance
- Fiduciary education
- Estate planning for owners
- Unwinding strategies
- Sales to third parties
- Business succession planning
- IRS audits
- DOL investigations
- Repurchase liability strategies
- Plan termination
- Employee Benefits & Executive Compensation
- ERISA litigation, including “stock drop” cases

PUBLICATIONS

- “ERISA Perspectives” Blog
- Reviews and revisions to Chapter 39, “Valuations for Employee Stock Ownership Plans” and Chapter 40, “ESOP Court Cases,” *Valuing a Business: The Analysis and Appraisal of Closely Held Companies*, Sixth Edition, Shannon P. Pratt and ASA Educational Foundation (2022) – Chelsea Mikula and Scott Stitt
- “Summary of Financial Projections Issues in Recent ESOP Litigation,” *INSIGHTS: ESOP Litigation Thought Leadership* (Autumn 2019) – Chelsea Mikula
- “Unsatisfying Answers in 4th Circ. Retirement Plan RUling,” *Law360* (March 2019) – Chelsea Mikula and Scott Stitt

SPEAKING ENGAGEMENTS

- “Legal and Regulatory Update,” The ESOP Association’s Ohio/Kentucky Chapter 2023 Thoroughbred Conference, Lexington, Kentucky (July 2023) – Chelsea Mikula and Scott Stitt
- “When the Worst Happens: Managing Financial Distress & Bankruptcy,” TEA National Conference 2023, Washington, D.C. (May 2023) – Chelsea Mikula and Brian Jackiw
- “Understanding Control & Impact on Valuation,” TEA National Conference 2023, Washington, D.C. (May 2023) – Peter Jones
- “ESOP Boards of Directors and Governance,” 37th Annual Ohio Employee Ownership Conference, Fairlawn, Ohio (April 2023) – Peter Jones
- “How a Trustee Will Review the 2022 Valuation Report,” The ESOP Association, OH/KY Chapter, 2023 Spring Conference (March 2023) – Peter Jones
- “Recent DOL Trends,” 2022 Great Lakes Regional Conference, The ESOP Association, Sandusky, Ohio (October 2022) – Chelsea Mikula

- "ESOP 101" and "ESOP Administration Explained," 2022 Great Lakes Regional Conference, The ESOP Association, Sandusky, Ohio (October 2022) – Peter Jones
- "Fiduciary Review of Your ESOP Valuation," The ESOP Association's TEA National Conference 2022, Washington, D.C. (May 2022) – Chelsea Mikula
- "Navigating DOL Investigations & IRS Audits," TEA National Conference 2022, Washington, D.C. (May 2022) – Peter Jones
- "Discussion of Landmark ESOP Valuation Case – The Inside Scoop," Webinar, Marcum LLP (February 2022) – Peter Jones
- "How to Handle Hard Conversations with Positivity," Great Lakes ESOP Conference 2021, The ESOP Association, Sandusky, Ohio (September 2021) – Peter Jones
- "Legal and Regulatory Update" and "ESOP Valuation and Recent Trends," Great Lakes ESOP Conference 2021, The ESOP Association, Sandusky, Ohio (September 2021) – Chelsea Mikula and Scott Stitt
- "ESOP Case Studies – The Good, the Bad and the Ugly," Exit Planning Institute (August 2021) – Chelsea Mikula
- "Legal and Regulatory Update for ESOPs," 35th Annual Ohio Employee Ownership Conference, The Ohio Employee Ownership Center (April 2021) – Chelsea Mikula
- "ESOP Toolbox," The ESOP Association's 2020 Great Lakes Conference (September 2020) – Ronald Stansbury
- "ABCs of ESOPS for Participants," 34th Annual Ohio Employee Ownership Conference (August 2020) – Ronald Stansbury
- "ESOP Legal and Regulatory Update," 34th Annual Ohio Employee Ownership Conference (August 2020) – Chelsea Mikula
- "What You Need to Know About ESOPs in Times of Economic Distress," Tucker Ellis LLP and Lazear Capital Partners (July 2020) – Scott Stitt and Brian Jackiw
- "Projection Issues Raised in ESOP Litigation," Business Valuation Resources (BVR) webinar (May 2020) – Chelsea Mikula
- "Analyzing the Valuation Issues in Recent ESOP Lawsuits," NCEO 2020 Employee Ownership Conference(April 2020) – Scott Stitt
- "Trends in ESOP Litigation by the Department of Labor and Private Plaintiffs," NCEO 2020 Employee Ownership Conference (April 2020) – Chelsea Mikula
- "What's Going to Happen to Our Valuation? ESOP Valuations During Radical Change," Ohio Employee Ownership Center Webinar (April 2020) – Peter Jones
- "Hot Legal & Regulatory Issues for ESOPs," 5th Annual Great Lakes Regional ESOP Conference, Sandusky, Ohio (October 2019) – Chelsea Mikula
- "ESOP Litigation Trends," NCEO Employee Ownership Conference, Pittsburgh, Pennsylvania (April 2019) – Chelsea Mikula
- "Hot Topics in ESOPs," Ohio/Kentucky Chapter of The ESOP Association's Annual Spring Conference, Powell, Ohio (March 2019) – Chelsea Mikula

- "The Anatomy, Choices, and Litigation Landmines of ESOPs," The Gathering 2019, San Diego, California (February 2019) – Chelsea Mikula
- "Asserting Claims and Crafting Defenses Based on Valuation of Stock in ESOP Litigation," ERISA Litigation Conference, American Conference Institute, New York, New York (November 2018) – Scott Stitt
- "ESOP Litigation Trends," 4th Annual Great Lakes Regional ESOP Conference, Sandusky, Ohio (October 2018) – Chelsea Mikula
- "Leveraging a Legacy: Introduction to ESOPs," Boy Scouts of America, Lake Erie Council, Cleveland, Ohio (September 2018) – Erica McGregor
- "Analyzing the Valuation Issues in Recent ESOP Lawsuits," NCEO Employee Ownership Conference, Atlanta, Georgia (April 2018) – Scott Stitt
- "On Representing ESOPs," *The ESOP Podcast*, Episode 13, Capital Trustees LLC (November 2017) – Scott Stitt
- "ESOP Legal & Regulatory Update," Ohio Employee Ownership Center's 31st Annual Conference, Fairlawn, Ohio (April 2017) – Scott Stitt
- "Hot New Legal & Regulatory Issues for ESOPs," The ESOP Association's Ohio/Kentucky Chapter's Spring Conference, Columbus, Ohio (March 2017) – Scott Stitt
- "ESOP Litigation: New and Emerging Claims and Guidelines for ESOP Valuations," American Conference Institute's 10th National Forum on ERISA Litigation, New York, New York (October 2015) – Scott Stitt
- "ESOP Is a 4-Letter Word," Great Lakes Regional ESOP Conference, Sandusky, Ohio (October 2015) – Scott Stitt
- "Don't Do That: Avoiding ESOP Problems," The National Center for Employee Ownership (NCEO) 2015 Conference, Denver, Colorado (April 2015) – Scott Stitt
- "Legal Update," Ohio/Kentucky Chapter Annual Spring ESOP Conference, Powell, Ohio (March 2015) – Scott Stitt
- "ESOPs: New and Emerging Trends in Private Company ESOP Litigation, Lessons Learned from Recent Decisions in ESOP Cases, and the Latest on DOL Investigations and Enforcement Policies," ACI ERISA Litigation Conference, New York, New York (October 2014) – Scott Stitt
- "ESOP Litigation: New and Emerging Claims and Recent Developments," ACI ERISA Litigation Conference, Chicago, Illinois (April 2014) – Scott Stitt
- "Helpful Hints for Fiduciaries: Avoiding and Surviving Litigation," The National Center for Employee Ownership, Annual Conference, Atlanta, Georgia (April 2014) – Scott Stitt
- "An ESOP Fable: Lessons from the Tribune Transaction," The ESOP Association, Ohio/Kentucky Chapter, Fall Conference (October 2013) – Scott Stitt

MEDIA QUOTES

- "An Employee Stock Ownership Plan Is a Retirement Benefit That Makes Workers Part Owners of the Company," *Business Insider* (November 2021, July 2022) – Peter Jones
- "Wilmington Fine Points to Lack of ESOP Guidance, Attorneys Say," Bloomberg Law (March 2019) – Chelsea Mikula and Scott Stitt

PROFESSIONAL MEMBERSHIPS

- The ESOP Association
- National Center for Employee Ownership
- Ohio Employee Ownership Center

Experience

- Counseled trustees of an ESOP in connection with real estate law and fiduciary issues in restructuring the company and related entities and increasing the ESOP ownership percentage to 100%
- Advised a consumer products manufacturer in the sale of a 30% ESOP-owned company and termination of the ESOP in connection with the sale of the business to a foreign buyer
- Represented the independent fiduciary of an ESOP which was partial owner of a company in connection with the sale of company assets and termination of the ESOP
- Advised a tech business in establishing 100% ESOP ownership by company contribution of shares to ESOP followed by redemption of other shareholders
- Counseled a high-growth business in establishing 30% ESOP structure taking advantage of IRC Section 1042 tax deferral and investment of proceeds in qualifying replacement securities
- Counseled an ESOP-owned military equipment supplier in ESOP termination due to adverse business conditions and excessive leveraging
- Structured and implemented a 100% ESOP transaction involving bank financing and subordinated seller financing
- Developed and implemented a strategy to unwind an ESOP where ownership strategy of the company's individual owners changed after establishment
- Defended an ESOP-owned healthcare company in connection with an extensive Department of Labor investigation
- Advised a 100% ESOP-owned, unionized S-corporation regarding various fiduciary responsibilities, administration, and compliance issues incurred over the years, ranging from diversification rights to changing distribution policy
- Represented a specially appointed ESOP trustee regarding sale of the business to a third party
- Advised an ESOP trustee regarding the reorganization of the business and its management in the face of competitive and litigation threats

- Represented ESOP trustees and companies in ERISA litigation and DOL and IRS investigations regarding all aspects of an ESOP's life cycle – the acquisition of stock, the sale of assets, and allegations of breach of fiduciary duty among other claims