

## ESOP TEAM

### OVERVIEW

BCLP has an interdisciplinary team of lawyers dedicated to advising trustees, companies, equity sponsors, and lenders involved with Employee Stock Ownership Plans (or “ESOPs”).

With respect to our corporate and transactional matters, our team regularly advises clients in the utilization of ESOPs for shareholder liquidity, including the creation and implementation of ESOPs, the sale of stock to ESOPs (both partial sales and complete change of control transactions), and mergers and acquisitions of ESOP companies. In connection with corporate transactions, we regularly advise clients in Section 1042 transactions and S corporation tax structuring. Our team also regularly counsels lenders with respect to ESOP acquisition financing and ordinary-course financings for ESOP companies. Finally, we have an unparalleled depth of knowledge advising trustees, shareholders, lenders, and boards of directors on fiduciary and governance-related issues confronting fiduciaries and ESOP-owned companies.

With respect to litigation and corporate risk, our litigators represent ESOP trustees and plan sponsors in lawsuits for breach of fiduciary duty or other violations of ERISA. We also regularly guide ESOP companies and fiduciaries through investigations by the Department of Labor and other governmental agencies.

Our team is often published in journals and regularly presents to professional and business groups regarding the use of ESOPs in areas such as succession planning, leveraged buyouts and M&A transactions.

### RECENT REPRESENTATIVE CORPORATE AND TRANSACTIONAL MATTERS

- Represented a U.S.-based leading manufacturer of private label personal care products in connection with a management buy-out via ESOP, including the private placement of notes and warrants to partially fund the transaction, pursuant to which the company was sold to a newly created ESOP, with the management team retaining warrants and synthetic equity.
- Represented the institutional trustee of an ESOP with regard to the sale of stock and related corporate structuring transactions of a New York-based loan consolidation and alternative lending company to a newly formed ESOP.

- Represented a Chicago-based family construction and construction management company in the implementation of a staged ESOP strategy to create shareholder liquidity.
- Represented the institutional trustee of an ESOP with regard to the merger of a partially ESOP owned Southeastern-based insurance brokerage company with and into a publicly traded strategic acquiror.
- Represented a Colorado-based radiology company in the implementation of an ESOP, the spin-off of select assets and business lines, the sale of stock to the newly formed ESOP, and related acquisition financing and 1042 transactions.
- Represented the institutional trustee of an ESOP with regard to the sale of stock of a partially ESOP owned Montana-based civil engineering firm, resulting in a 100% ESOP owned company.
- Represented the institutional trustee of an ESOP with regard to the sale of stock of an Atlanta-based construction management and civil engineering firm to a newly formed ESOP.
- Served as special counsel to a European multi-national corporation purchasing the stock of a U.S. corporation from an ESOP.
- Developed an independent fiduciary mechanism for a transaction, in which assets from our client's ESOP were transferred to the retirement plan of the purchaser.
- Represented the institutional trustee of an ESOP with regard to the sale of stock of a defense engineering and contract business to a foreign public company.
- Represented a California-based technology and professional staffing company with respect to its spin-out of select technology assets and subsequent sale to a newly created ESOP.
- Represented the trustee of an ESOP-owned company in its sale of substantially all of its assets to a strategic acquirer.
- Represented a national medical practice in connection with its establishment of a management services organization, recapitalization, and partial sale to a newly formed ESOP.
- Represented a California-based marketing services company in connection with its recapitalization and second-stage ESOP sale.
- Represented an Ohio-based advanced materials manufacturer in connection with its acquisition of an ESOP-owned manufacturer of cemented tungsten carbide solutions.

## RECENT REPRESENTATIVE LITIGATION AND CORPORATE RISK MATTERS

- Represented several ESOP clients in Department of Labor investigations and averted DOL prosecutions.
- Successfully represented an ESOP trustee against claims for benefits and accompanying allegations of fiduciary breach.
- Represented an independent ESOP fiduciary against claims for professional malpractice and fiduciary breach.
- Obtained summary judgment for a company-sponsored ESOP and its trustees on claims for violation of ERISA's Anti-Cutback and Significant Detriment Rules.

## RECENT REPRESENTATIVE LENDING MATTERS

- Represented lender in connection with \$12,500,000 credit facility to finance the sale of stock to a newly formed ESOP for a construction company.
- Represented lender in connection with \$40,000,000 credit facility to finance the sale of stock to a newly formed ESOP for a mechanical contracting company.

For additional information on Bryan Cave Leighton Paisner's ESOP practice please contact Steve Schaffer (Group Leader), Robert Lystad (Corporate Transactional), or Bard Brockman (Litigation/Corporate Risk).

## MEET THE TEAM



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## RELATED PRACTICE AREAS

- Employee Benefits & Executive Compensation

## RELATED INSIGHTS

Events

May 26, 2020

**Schaffer to Present on Liquidity Options for Business Owners**