

## ESOP TEAM

### OVERVIEW

BCLP has an interdisciplinary team of lawyers dedicated to advising trustees, companies, equity sponsors, selling shareholders, management teams, and lenders involved with Employee Stock Ownership Plans (“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), the sale of ESOP-owned companies to strategic and financial buyers, the utilization of ESOPs as a means of affecting bolt-on 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.

Regarding lending matters, our team also regularly counsels lenders and ESOP-owned companies with respect to ESOP acquisition financing and ordinary-course financings for ESOP companies. In this capacity, we have a deep understanding of both the ordinary-course lending and corporate finance matters presented in various lending structures, as well as the nuances involved in lending to ESOP-owned companies (including the unique funds flow and financial covenant issues presented with such loans).

With respect to litigation and corporate risk, our litigators represent ESOP trustees, corporate fiduciaries, selling shareholders and plan sponsors in disputes relating to alleged breaches of fiduciary duty and other violations of ERISA. We also regularly guide ESOP trustees, corporate fiduciaries, and plan sponsors through investigations by the Department of Labor and other governmental agencies.

As a result of our broad-based ESOP practice, 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. In this capacity, our team regularly advises stakeholders within the ESOP ecosystem on contentious and day-to-day operational, governance, and finance related issues.

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 100% ESOP-owned, Houston based industrial distribution company in connection with its sale to a publicly traded strategic acquiror and related retention bonus arrangements.
- Represented a Georgia-based specialty building manufacturer in connection with its implementation of an ESOP, subsequent merger with a 100% ESOP-owned strategic acquiror, and related acquisition financing and 1042 transactions.
- 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, and related acquisition financing.
- Represented a national medical practice in connection with its establishment of a management services organization, recapitalization, partial sale to a newly formed ESOP, and related acquisition financing.
- Represented a California-based online product marketing company in connection with its recapitalization, second-stage ESOP sale, and related acquisition financing.
- Represented an Ohio-based advanced materials manufacturer in connection with its acquisition of an ESOP-owned manufacturer of cemented tungsten carbide solutions.
- Represented a California-based technology and professional staffing company with respect to its spin-out of select technology assets, partial sale to a newly created ESOP, subsequent second-stage ESOP transaction, and related financing transactions.
- Represented a Chicago-based family construction and construction management company in the implementation of a staged ESOP strategy to create shareholder liquidity.
- Represented a Colorado-based, multistate free company that owned and operated free-standing radiological centers 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 an institutional ESOP trustee in connection with the partial redemption and acquisition of the remaining stock of an Ohio-based custom molding supplier to the automotive industry.
- Represented the institutional trustee of an ESOP with regard to the acquisition of 100% of the stock of a New York-based infrastructure construction and engineering company.

- Represented a North Carolina technology company in the government contracting vehicle in the establishment of a contributory ESOP and with related issues involving Tribal ownership [
- Represented a selling shareholder of a Florida-based marketing company in restructuring of an S corporation to allow for the sale of seller warrants to a potential strategic investor without breaking the ESOP-owned entity's S corporation status.
- Represented the selling shareholders of a New York-based streaming company on a post-transaction restructuring to avoid potential claims resulting from a brief downturn in business following a large partial ESOP transaction.
- Represented the institutional trustee of an ESOP with regard to the merger of a partially ESOP-owned Southeastern-based insurance brokerage with and into a publicly traded strategic acquiror.
- Represented the trustee of an ESOP with regard to the sale of stock of a Cincinnati-based mechanical contractor.
- 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.

**Recent Representative Litigation and Corporate Risk Matters:**

- Obtained a dismissal at the pleadings stage for a professional trustee that had been sued in a private-plaintiff lawsuit in connection with the trustee's purchase of company stock on behalf of a newly formed ESOP.
- Obtained an early dismissal for a professional ESOP trustee that had been sued by a bankruptcy trustee in connection with a proposed sale of the company that the trustee had declined to approve.

- Obtained summary judgment for a company-sponsored ESOP and its trustees on claims for violation of ERISA's Anti-Cutback and Significant Detriment Rules.
- Obtained a dismissal for an institutional ESOP trustee and its employees in connection with a litigation trustee's claims for fiduciary breach related to the ESOP trustee's annual valuation of ESOP stock for a company that ultimately declared bankruptcy.
- Represented independent ESOP trustee and former directors at trial of class action claims for fiduciary breach (decision pending).
- Multiple representations of an institutional ESOP trustee on separate claims asserted by the U.S. Department of Labor in connection with the trustee's purchase of private company stock.
- Multiple representations of two of the country's largest institutional ESOP trustees on various claims filed by private plaintiffs in connection with the trustees' purchase of private company stock.
- Represented an institutional ESOP trustee on private plaintiff claims for fiduciary breach in connection with the trustee's sale of company stock and related termination of the ESOP.
- Current counsel to company directors on private plaintiff claims that the directors had breached the duty to monitor the professional ESOP trustee they had appointed to consider a proposed ESOP sales transaction.
- Represented a bank on claims for fiduciary breach in connection with the bank's inability to honor ESOP redemption requests due to enforcement restrictions imposed by bank regulators during the Great Recession.
- Represented professional fiduciaries, plan sponsors, employers and company directors in dozens of separate ESOP investigations pursued by the U.S. Department of Labor.

#### **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.
- Represented large nonbank lender as special ESOP counsel in connection with a partial sale of a large accounting company to an ESOP.

For additional information on BCLP's ESOP practice please contact [Steve Schaffer](#) (Group Leader), [Robert Lystad](#) (Corporate Transactions), [Bard Brockman](#) (Litigation and Corporate Risk), or

Cass Hollis (Fiduciary and Lending).

## MEET THE TEAM



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## RELATED PRACTICE AREAS

- ERISA & ESOP
- Employee Benefits & Executive Compensation
- M&A & Corporate Finance
- Finance

## RELATED INSIGHTS

Events

May 26, 2020

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