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## NATIONAL CONFERENCE RECAP

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## Please Tell Us You Saw What Happened...

### Did You Miss the National Conference in Washington DC?

Unfortunately, if you missed this year's National Conference, nothing can replace the experience of being there firsthand to see the great General Sessions, revel in the Awards Ceremony, network with your peers at the receptions, catch the sights on the Night Tour of the Monuments, or learn from the entries in the Annual Award for Communications Excellence. But there are still a few ways to make up for some of what you missed.

Turn to page 8 to read wrap ups of some of the biggest events from our most exciting conference yet.

There were too many groundbreaking events to fit them all in a single article; we had to write several to even come close. Look for the blue and yellow "National Conference Recap" graphic to find out what happened in Washington, DC this past May.

And you can get even more online.



- Visit our [Flickr](#) page for professional photos of the event, including photos of people you may recognize.
  - See our [YouTube](#) channel for select videos of our General Sessions, including the Opening Session.
- And of course stay tuned for information on our Las Vegas conference. Registration opens in early July. €

# Ownership Advantage

## At Recology, Employee Owners' Meetings Show that Nothing Beats Face-to-Face Communication

By Paul Dougherty, Tax Manager, Recology

Communicating effectively in person with more than 3,500 employee owners working at various locations can be an arduous task. While Recology has worked hard to communicate with its employee owners using both print and digital formats, we have found that the most effective means of reaching all employee owners has been through our annual Employee Owners' Meetings (EOM), hosted by the President and Chief Executive Officer, Mike Sangiacomo.

Recology hosted its first series of EOMs in February 1996. Mike launched the annual EOMs with a belief that the best way to communicate important information was to engage employee owners personally. Based on more than 20 years of feedback, his approach has proven correct.

### The First EOMs

The first meetings spanned three weeks and included 16 facilities in different locations. These EOMs provided a unique opportunity for all employee owners to interact with the corporate management team, uniting employee owners over a hot meal and important conversation.

At EOMs, Mike and the other corporate officers would discuss the issues that face Recology. They would explain in detail the company-wide performance results for the year as well as both short- and long-term growth opportunities.

The meetings also provided Mike a chance to hear directly from Recology employee owners and to learn about issues that were meaningful to each operation. At the end of his presentation, Mike would recognize an employee of the year for each location, and answer questions from the employee owners. He would answer as many as were needed—even if it took three hours (which it sometimes did).

### EOMs Today

Things have evolved since that initial round of meetings. For the 24<sup>th</sup> annual meetings in 2019, Mike visited 33 locations over a six-week period, spanning Recology operations in California, Oregon, and Washington and reaching more than twice as many employees as the original meetings did in 1996.

One thing that has not changed, however, is that the EOMs are one of the most valuable tools we have for communicating with employee owners.

### How it Happens

Putting on successful EOMs doesn't "just happen." These meetings require a lot of hard work from a large group of people. At Recology, we collect data all year long—including taking pictures, brainstorming ways to keep employee owners engaged, and documenting activities and ideas on future topics to be discussed.

Paula Davila-Hester, Executive Assistant to the Office the President and CEO, is responsible for all EOM logistics. While the meetings take place in February and March, Paula begins the heavy logistical planning months before—in late October.

## ESOP | Report



### *The Voice of The ESOP Association*

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It starts with General Managers at all Recology locations deciding which dates work best for their employees. Generally, we avoid Fridays and Mondays, as well as holidays like Valentine's Day. Next, Paula crafts a "skeleton schedule" that ties the requests to a reasonable time frame for travel and makes the best use of time for everyone involved.

The Recology Ownership Culture Committee (ROCC), with focuses on communication and culture and includes employees at each location, promotes the upcoming EOMs to their fellow employee owners. High employee owner's attendance is a top priority.

While Paula works on logistics and the ROCC works on promotion, Mike works closely with Mary Sawai, Community Engagement and Brand Manager, on the presentation deck and the customized PowerPoint slides for the year. One of the primary elements to the presentation is an overview of company updates in a story format, which keeps the presentation informative, fresh, and engaging.

For example, on the 50th Anniversary of Martin Luther King Jr.'s death, Mike tied the waste industry to his assassination. (Dr. King was in Memphis during a garbage strike when assassinated.) At one of the EOMs, we discovered that a Recology employee had a relative who worked in the waste industry at the time, and it was fascinating to make the connection.

## What it Looks Like

The format for the two-hour meeting begins with a slideshow showing employees participating in various Recology-sponsored volunteer events in support of our local communities. While the slideshow is running, employees enjoy a catered lunch or dinner.

Then it is time for the formal presentation. Highlights from Recology's history are woven into the meaning of the ESOP and the role each employee plays in the company's success. Awards are given to employees who have been

recognized internally for their extraordinary efforts, or externally for their outstanding performance within the industry.

Major accomplishments from the past year are then shared along with the significant initiatives and business opportunities that will engage the company for the coming years. Financial updates are then presented that tie directly to the economy or various issues that could affect the company's performance (i.e., China's National Sword, plastic recycling limitations, environmental regulations, etc.). The meeting is then concluded with an explanation on how the ESOP works, followed by an open forum of questions and answers.

## High Attendance, High Value

Based on employee feedback, the EOMs are extremely effective, garnering the attendance of more than 80 percent of employee owners across the company. At Recology, we cannot stress how important it is to communicate with all employee owners on an annual basis, and to have the CEO deliver the "State of the Company" address at their work location.

Next year will mark the 25th anniversary of our EOMs, and a centennial celebration of the company. As you might expect, planning is already well underway.

*This article was reviewed and approved by the Chair of the Ownership Culture Committee, Jason Wellman, Senior Relationship Consultant, ESOP Partners. *

### Calendar of Deadlines and Important Dates

**Aug. 7-9** [Employee Owner Retreat](#)

**Nov. 13-15** Las Vegas ESOP Conference & Trade Show

**Dec. 1-4** [Leading in an Ownership Setting](#)

To see the full list of .ESOP Association meetings, visit us online at: [www.esopassociation.org](http://www.esopassociation.org).

# Advisory Committee on Administration

## Understanding ESOP Audits, Part I

By Aaron L. Geibel, Crowe LLP

Reviewed by Vicki Graft, Swerdlin & Company

**A**ny company with an ESOP is required by the 1974 Employee Retirement Income Security Act (ERISA) to conduct an audit that examines the accuracy of the plan's financial statements. These audits must be conducted in accordance with U.S. generally accepted auditing standards (GAAS) and must be attached to the

Form 5500 that companies submit to the Department of Labor.

This article discusses why these audits are important, examines the goals and general steps taken during an audit, and offers examples of pitfalls frequently encountered during these audits.

## The Value of an Audit

The ESOP audit is critical to ensuring proper accountability of the plan and its operation. While an audit performed in accordance with GAAS is not designed to provide an opinion on the plan's compliance with applicable laws and regulations, it is an important tool that management, plan participants, and other interested parties can use in monitoring the plan's financial status.

Hiring a qualified, independent public accountant to perform such an audit is one of a plan administrator's ongoing responsibilities.

Throughout the audit, an accountant will review the financial information provided by the company about

*An audit...is an important tool that management, plan participants, and other interested parties can use in monitoring the plan's financial status.*

the plan, test evidence to support amounts that will be disclosed in the financial statements, and determine whether the plan has adhered to U.S. generally accepted accounting principles (GAAP).

Per GAAS, one of the auditor's objectives is to identify and assess the risks of material misstatement, whether due to fraud or error. Ultimately, the auditor will opine whether the plan's financial statements are free of material misstatement.

## Preparing for the Audit

Prior to commencing the audit, an auditor should provide a contract—called an engagement letter—to the plan administrator. This document will describe the audit work parameters and specify associated fees. Additionally, the engagement letter clarifies the responsibilities between both parties and outlines the objectives and limitations of the proposed engagement.

Prior to signing the contract, plan administrators should thoroughly review the document and its terms.

Once signed and returned to the auditor, fieldwork may commence.

## Limited vs. Full Scope Audits

Since it is the legal responsibility of the plan administrator to maintain complete and accurate ESOP records, part of the audit process involves furnishing various financial, accounting, or other plan information to the auditor for review. If a third-party service provider performs recordkeeping services for the ESOP, arrangements should be made with that provider to make records available to the auditor.

Generally, auditors are engaged by company management to perform a full scope audit of the plan's financial statements in accordance with GAAS. However, in

accordance with ERISA Section 103(a)(3)(c), management can instruct the auditor to limit the scope of the audit procedures by obtaining certification from the plan's qualified trustee or custodian that address both the accuracy and completeness of the plan's investment information. Qualified certifying entities include banks or similar institutions, or insurance carriers that are regulated, supervised, and subject to periodic government examination.

During a limited scope audit, the auditor does not test this certified investment information but, similar to a full scope audit, does scrutinize the other operational aspects of the plan. These aspects include testing: participant records (such as the allocation of contributions and earnings to individual accounts), benefit distributions, and other information not covered under the certification.

An auditor engaged to perform a limited scope audit cannot express an opinion of the plan's financial statements. Rather, the opinion is categorized as a disclaimer because of the significant information not tested under the audit process. Limited scope audits are not available to ESOPs that:

- Have assets held by a broker/dealer or an investment company.
- File an IRS Form 11-K.

Those who want further information on the requirements for a limited scope audit should contact their plan auditors. Custodial and/or trust fees may apply to entities that issue limited scope certifications.

## What Is Covered

The ESOP audit process covers the following plan components:

- Employer contributions.
- Employee personnel data.
- Participant allocations.
- Plan distributions.
- ESOP trust investments, including associated income or loss, administrative expenses, and liabilities.

**Employer contributions.** During testing of employer contributions, an auditor verifies whether employer contributions were received by the plan. Evidence to support these company-to-plan transactions includes reconciling the flow of funds between corporate accounts and the ESOP trust. Any non-cash employer contributions are reviewed to ensure appropriate fair market value was recorded as of the date of receipt.

Review of the employer's federal income tax return also will help determine whether any employer contributions are deemed receivable as of the plan year-end.

**Employee personnel data.** Verifying the accuracy of personnel data is critical as this information is the basis for determining material amounts presented in the plan's financial statements. Such participant information includes hours worked, compensation (as defined by the plan document), hire and termination dates, age, etc.

Through sampled testing, an auditor determines whether accurate participant data was supplied by plan management, and compares this data to employer files and the data maintained by a third-party record keeper. This audit step verifies that all eligible employees have been properly included in applicable plan allocations, and that ineligible participants have been excluded.

**Participant allocations.** The mathematical accuracy of individual participant accounts is verified by recalculating sample participant allocations using the allocation formula detailed in the ESOP plan document. Additionally, the auditor should determine whether any ERISA annual contribution limits are exceeded either by the plan or on a participant-level basis.

**Plan distributions.** Audit procedures related to ESOP distributions include obtaining a schedule of benefit payments processed during the plan year and tracing such amounts to trustee reports. Additional scrutiny is applied by considering the reasonableness of current and prior-year payment amounts in relation to the number of participants who received payments, and investigating any unusual fluctuations.

The auditor also ensures the participant's eligibility to receive payment under the plan's distribution provisions and recalculates the vesting percentage to determine the vested balance. Further testing steps typically include verifying receipt of benefit payments by examining canceled checks and participant distribution election forms.

If an external organization is responsible for facilitating distributions from the plan, the auditor typically will request a Service Organizational Report (SOC). This report helps ensure that the internal controls of the company providing services to the ESOP are suitably designed and it is operating effectively to provide such services.

**ESOP trust investments.**

Even in a limited scope audit, an auditor will test whether the income from the plan's investments has been properly recorded and allocated to participant accounts. Applicable plan expenses may be reviewed for reasonableness and considered whether the expenses paid by the plan are permissible under the terms of the plan document. Any expenses that are disallowed or deemed excessive may fall under additional scrutiny and be considered a prohibited plan transaction, subject to IRS excise taxes.


Because many ESOPs borrow money to finance the acquisition of employer securities, one of the major objectives of an audit is to evaluate the accuracy of disclosure matters related to the loan transaction—including an employer's guarantee of the debt and the restriction of stock being used as collateral.

## Final Steps

Once these audit testing procedures have been completed, misstatements in the plan's accounting records may be uncovered. Depending on their materiality, additional audit procedures are performed as warranted.

The plan administrator will receive information on all misstatements, including the nature and amount of the items, and their overall effect on the plan. Depending upon the materiality of the amounts involved, management may have the option to either post or waive these adjustments to the financial statements.

Known audit adjustments normally are recorded by employee benefit plans because of the DOL's potential enforcement action against plans that fail to properly calculate and maintain individual participant account balances.

Once the audit is completed, the auditor will issue a written report that contains an opinion on the financial statements and any supplemental schedules that will be attached to the required Form 5500 filing. 

*This article was reviewed and approved by the Chair of the Administration Advisory Committee, Dolores Lawrence, Managing Director at Blue Ridge ESOP Associates.*



Thanks to our 2019 Board of Directors. From left to right, David Fitz-Gerald, Peter Ney, Ali Jamshidi, Gary Shorman, Derrick Vick, Missy Pieske, Karen Ellis, Lynn Dubois, Brian Ippensen, Mark Lomele, Jim Bonham.

## Court Allows Participant to Challenge Trustee Indemnification

By Theodore M. Becker and Richard J. Pearl, McDermott, Will & Emery

Edited by Julie Govreau, Senior Vice President and Chief Legal Counsel, Greatbanc Trust Company, Lisle, IL

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In a lawsuit filed in U.S. District Court, a former employee challenged the indemnification provision that exists in the engagement agreement between a company and the ESOP trustee. While the suit involves other charges, this article will focus only on the issue of trustee indemnification, since this is a key concern for the ESOP community.

The right to indemnify ESOP trustees must be vigorously defended by the ESOP community. It is possible for disgruntled ESOP participants to file lawsuits making unfounded allegations; if the ESOP community is to have qualified trustees, it must stand behind attacks on the indemnification of its trustees.

### Background

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Michael McMaken, a former employee of Chemonics International Inc. and a participant in its ESOP, filed a claim on behalf of the ESOP and a class of similarly situated participants (*McMaken v. GreatBanc Trust Co.*, No. 17-cv-04983, U.S. District Court, N.D. Ill.). In his initial complaint, McMaken claimed the trustee caused the ESOP to engage in an alleged prohibited transaction under ERISA §406.

McMaken then filed a motion to submit an amended complaint, which the court allowed.

### ERISA Section 410(a)

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McMaken argued that the company's trustee indemnification provision violates ERISA §410(a), which states: "any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under [part 4 of Title I of ERISA] shall be void as against public policy."

However, indemnification is not even mentioned in §410(a). Indeed, the U.S. Department of Labor has interpreted §410(a) to "**permit** indemnification agreements which do not relieve a fiduciary of responsibility or liability...."

In the DOL's own words, "indemnification provisions which leave the fiduciary fully responsible and liable, but merely permit another party to satisfy any liability incurred by the fiduciary in the same manner as insurance purchased under section 410(b)(3), are therefore **not void** under section 410(a)."

The DOL has given examples of such permissible indemnification provisions:

(1) Indemnification of a plan fiduciary by:

- (a) an employer, any of whose employees are covered by the plan, or an affiliate... of such employer, or
- (b) an employee organization, any of whose members are covered by the plan...

The DOL interpretation allows the company, as an employer whose employees are covered by the ESOP, to indemnify the trustee.

The court acknowledged that a fiduciary may be indemnified by a company that sponsors an ESOP in the same manner as insurance. The court observed: "the relevant indemnification provisions of the engagement agreement appear to provide GreatBanc at least a plausible claim for indemnification for ERISA violations."

The court went on to observe that the "plain terms of the engagement agreement provide broad indemnification for any sums borne by GreatBanc in relation to legal proceedings arising out of its services as trustee to the plan. It then carves out any 'loss, cost, expense, or damage' arising from a final judgment in which GreatBanc is found to have been negligent or engaged in willful misconduct."

### Prohibited Transactions Argument

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McMaken argued that the carve-out provision, on its face, does not exclude from indemnification ERISA prohibited transactions that create *per se* liability under ERISA §406. The court did not decide this argument, but in a brief discussion the court appeared to misunderstand the nature of §406 prohibited transactions.

The court characterized ERISA §406 as imposing *per se* liability for prohibited transactions. In actuality, there is no "per se" liability under §406. Although some courts have characterized §406 as setting forth as "per se" prohibitions, *liability* is an entirely different concept.

A fiduciary is **not liable** for a prohibited-transaction if an exemption applies, and the plaintiff always bears the burden of proving causation of damages and the appropriateness of other relief requested.

### Plan Asset Argument

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McMaken also argued that the indemnification provision violates ERISA §410(a) because the ESOP owns 100 percent of the company's shares, and therefore the company's payments under the indemnification are akin to payments from the ESOP. The court observed, citing the DOL Plan

Asset Regulation, that the ESOP's 100 percent ownership of an operating company will not make the company's assets the ESOPs assets.

The court, however, went on to erroneously opine that if the company were to indemnify the trustee against a sizeable judgment, it would decrease the value of the company and, by extension, the shares held by the ESOP.

This aspect of the court's opinion flies in the face of the DOL's Plan Asset Regulation—which permits indemnification from an operating company plan sponsor whose shares are owned by a plan—and corporate law.

Where a plan sponsor company honors a contractual agreement to indemnify plan fiduciaries, this does not constitute “indirect imposition of costs on a plan.” Such thinking puts all ERISA plan fiduciaries at risk, not just ESOP trustees.

## Payment of Defense Costs Permissible

McMaken did not challenge the right of the company to pay, or the right of the trustee to receive, payment of the attorneys' fees and expenses incurred by the trustee in defending McMaken's lawsuit. A fiduciary who is accused of, but not found liable for, breach of ERISA may receive indemnification for costs incurred in successfully defending itself against an accusation of breach.

The payment of defense costs under the indemnification provision of the engagement agreement is not an agreement to relieve the trustee of its responsibility or liability to discharge its duties under ERISA, and therefore it is permissible.

## Conclusion

It is important to recognize that the court ruled only on McMaken's motion to file an amended complaint. The court made no rulings on the merits of the case, and its opinion is not final.

In opposing McMaken's motion, the trustee argued that the amendment would be futile. This is a very difficult basis on which to oppose amendment of a complaint because the Federal Rules and appeals courts decisions provide that leave to amend should be freely given, and in undertaking the futility analysis, the court must accept all well-pleaded factual allegations as true (even if they are not true) and draw inferences in favor of the party seeking leave to amend.

What the court decided at this point is that McMaken's new claims are not futile. The court did not enter judgment against the trustee, and the trustee will have an opportunity to present facts and make further legal arguments in its defense as the case proceeds. [E](#)

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# Washington Report

## At our National Conference, Chapter Leaders Learned These 11 Rules for Engaging in Effective Advocacy. Now it Is Your Turn.

By James Bonham, President and CEO, The ESOP Association

The ESOP Association's National Conference has been held in Washington DC for the past 42 years for one very important reason: advocacy. And 2019 didn't disappoint when it came to interacting effectively with Members of Congress. This year's 830 National Conference attendees sold out our main hotel and an additional room block at a nearby hotel. Then they flooded the halls of Congress, holding impactful meetings that generated new co-sponsors for our targeted legislation, created new ESOP champions, and resulted in appointments for Congressional Members to visit ESOP companies later this year.

Gathering hundreds of our members in Washington every May is a cornerstone of ESOP advocacy efforts and helps preserve the very policies that make ESOPs possible.

This year's National Conference has now come and gone, but according to the feedback from attendee surveys, one of the best sessions of the week was the advocacy training provided to our State and Regional Chapter leaders.

For the session, I asked two colleagues—former North Dakota Congressman Earl Pomeroy and GOP lobbying powerhouse Matt Keelen—to join me for an hour long briefing on the do's and don'ts of Congressional lobbying. It was a fun, highly interactive, and immediately impactful conversation. Our volunteer leaders headed to Capitol Hill armed with new tactics, and many came back enthusiastically reporting how much more successful their meetings had been. It was a total win.

Next year, we plan to offer more robust training to the *entire* conference. (Be sure not to miss it.) Until then, here are some of the best practices for advocacy that our panelists shared this May.

**Rule 1: You are important.** Members of Congress have lots of demands on their time, but meeting with you—their constituents—is one of their highest priorities. So don't be afraid to request a meeting. Your elected officials not only

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# NATIONAL CONFERENCE RECAP

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## ESOPs Rock!

### Conference Launches with an Awards Ceremony to Beat the Band

The lights went down, the music started to play—Queen’s “We Will Rock You,” accompanied by hand claps from the crowd—and right away you could tell this was a different kind of awards ceremony.

In fact, the energy and fun of the event were surpassed only by the excellence of the companies and people who were honored that night.

The festivities were hosted by Board Chair Gary Shorman and Chapter Development Officer Dan Marcue, both festooned in tuxedos for the occasion. As the music played they walked through the crowd in the glow of spotlights. Beams of colorful light spun around the room as the duo approached the stage, which was piled with stacks of working Marshall amplifiers that would have made Jimi Hendricks proud.

The 90-minute event sped along, as award winners walked to the stage while customized walk up music—specially chosen to match the recipient or the award—played to greet them. It was an evening to remember and to celebrate those people and companies that make the ESOP community uniquely collaborative and excellent.



# NATIONAL CONFERENCE RECAP

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## 2019 ESOP Association Award Winners

### National Awards

#### Life Service Award

Janet Edmunson

*Founder, JME Insights*

#### Employee Owner of the Year

Jeff Mounts

*ESP International, Cedar Rapids, IA  
Iowa/Nebraska Chapter*

#### ESOP Company of the Year

Miklos Systems, Inc.

*Fairfax, VA*

*Mid-Atlantic Chapter*

#### Employee Ownership Month

##### Poster Contest

Moody's Co-worker Owned

*Gorham, ME*

### National Achievements

#### 2019 Silver ESOPs

Acadian Ambulance Service, Inc.

American Health Companies, Inc.

Bayer Construction Company, Inc.

Bell Engineering

D & S Manufacturing Co., Inc.

Haywood Builders Supply

Kennicott Brothers Company

Majors Plastics, Inc.

North States Industries, Inc.

Oxygen Service Company

Parts Wholesalers, Inc.

Riverview Community Bank

Sentry Equipment & Erectors, Inc.

Shawmut Design and Construction

Tejas Logistics System

The Resorts Companies, Inc.

Van Buren Bancorporation

Van Meter Inc.

#### Membership Recruitment Award

Jason Wellman

*ESOP Partners, Appleton, WI*

### Annual Awards for Communications Excellence

#### 250 Employees or Less

##### Video

*Winner: Moody's Co-worker Owned*

*Runner Up: Harris and Associates*

##### Print Materials

*Winner: R&K Solutions*

*Runner Up: DVL Group*

##### Intranet

*Winner: Geographic Information  
Services*

##### Employee Ownership Marketing

*Winner: DVL Group*

*Runner Up: Pro Food Systems*

##### One Special Event

*Winner: Wiley Wilson*

*Runner Up: Williams Company  
Management Group*

##### Series of Special Events

*Winner: Oxygen Service Company*

*Runner Up: Geographic Information  
Services*

##### Total Communications

*Winner: Williams Company  
Management Group*

*Runner Up: DVL Group*

#### More than 250 Employees

##### Video

*Winner: Air Tractor*

*Runner Up: Eagle Communications*

##### Print Materials

*Winner: Walman*

*Runner Up: Maine Drilling and  
Blasting*

##### Intranet

*Winner: Restek*

*Runner Up: Proponent*

##### Employee Ownership Marketing

*Winner: Entertainment Partners*

*Runner Up: Eagle Communications*

##### One Special Event

*Winner: Proponent*

*Runner Up: Tesco Controls*

##### Series of Special Events

*Winner: DCS Corporation*

*Runners Up (2): Burns & McDonnell  
ITA Group*

##### Total Communications

*Winner: Eagle Communications*

*Runner Up: Burns & McDonnell*

### Awards for Chapters

#### Outstanding ESOP Association Chapter Officer

Chelsey Paulson

*North Country Business Products*

*Minnesota/Dakotas Chapter*

#### ESOP Association Chapter of the Year

*Iowa/Nebraska Chapter*



See the [Judges' Comments](#) online for more information.

# NATIONAL CONFERENCE RECAP

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## The Future of Employee Ownership

### New Board Chair and New President Engage in an Informal, Insightful Conversation About Where We Are All Headed

The first full day of the National Conference started on a high note as new Board Chair Gary Shorman and new Association President Jim Bonham took to the stage for a casual but very meaningful conversation about the future of The Association and of employee ownership.

Along the way they touched on Jim's background and reasons for coming to Washington, how best to tell the story of employee ownership, enforcement of ESOPs, and working collectively to grow employee ownership.

#### On Coming to Washington

Early on, Shorman focused on getting to know our new President, and asked Bonham what brought him to Washington.

"For me it was always about public service," said Bonham. "I wanted to come to Washington to be involved in public policy."

The areas that drew his interest in particular were healthcare, labor, and employment. Healthcare was a focus because when Bonham was young, his father experienced a significant illness that created a financial hardship for the family. That experience stayed with him and he wanted to ensure that others had mechanisms available to help deal with their own potentially significant health concerns.

"I came to Washington," he said, "because if you want to make a difference in your country, this is the place you go."

During his political journey in the nation's capital, Bonham worked in the offices of Congressman Bob Matsui of California and Senator Jeff Bingaman of New Mexico.

Following that, he was the chair of the House Democratic Congressional Campaign Committee, which was focused on electing a majority in the House. The role involved working with the party committees for all 50 states—an experience that should serve Bonham well in working with The Association's 18 chapters.

# NATIONAL CONFERENCE RECAP

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The position also included raising and spending large sums of money—\$110 million—over an 18 month period. That background in raising and spending money for a specific cause will prove valuable as Bonham leads the Employee Ownership Foundation into the future.

## Telling the ESOP Story

Shorman noted that ESOPs have a great story to tell, and asked Bonham how the ESOP community can better tell that story.

The first step, Bonham replied, is making the best tools available to the staff and the chapters. That work has already begun and involves a significant evaluation and upgrade of The Association's technological infrastructure. Other efforts include supporting the chapters by producing new branded materials they can use in their communications and marketing efforts.

Another way to better relate the employee ownership story is to focus on our highest aspirations—our dreams, said Bonham.

"Realtors have done a really good job since the 1940s convincing everyone that the American dream is home ownership," said Bonham. "For me, I think the American dream should be ownership of the place where you work, where you can be contributing to your family and your future...because you are building equity in your own life. That's how I view employee ownership."

Another step for improving how we talk about employee ownership is refining and enhancing our advocacy training and tools. An initial step in that direction was taken at the National Conference, where chapter officers received [documents](#) to share with elected officials and [training](#) and on how to conduct their meetings.

The training was conducted by Bonham, top Republican lobbyist Matt Keelen, and Earl Pomeroy—an ESOP supporter and former Democratic Congressman from North Dakota. Feedback on the event was positive and chapter officers reported that the materials helped improve their meetings that day.

Those same [documents](#) are now available online to all members. (To learn the advocacy tips that were

offered, see this month's Washington Report, page 7. And expect to see more training and materials in the future.)

Bonham offered one more thought on telling the ESOP story, and that entails applying continuous, steady pressure on Members of Congress. The best bet: Schedule more than one meeting per year with your Members of the House and Senate.

Bonham pointed out that the average Member of Congress receives about 15,000 meeting requests a year. Unless members of the ESOP community are constantly pushing to be heard, our voices will be drowned out.

## Enforcement of ESOPs

The enforcement of ESOPs is a hot-button topic and it should surprise no one that the subject arose in the conversation as well.

From the employee ownership community, suits brought by the Department of Labor are contradictory, said Bonham. But that perspective is not unique: Enforcement agencies, he pointed out, always want the broadest prosecutorial latitude possible, and that can lead them to pursue actions that are difficult to understand and reconcile.

Those same agencies typically don't want to tie their own hands by limiting their prosecutorial options.

Our approach, then, needs to engage policy makers and must involve conversations with the Secretary and Undersecretary of Labor, and the White House. The goal



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should never be to involve policy officials in specific cases, but to engage them in setting clearer rules and regulations for all ESOP companies.

“Regulation by litigation doesn’t work, and it’s hurting the very people the enforcement division is trying to protect,” said Bonham. “It’s hurting the employees.”

*“If you look at one big giant problem, it always looks insurmountable,” said Bonham. “But if you can break it down into smaller pieces and smaller steps, you can accomplish anything. And I think we can do that with the Department of Labor.”*

He said The Association has already started having productive meetings on proposed guidance with the Department of Labor. One thing that is clear already is that the agency wants to produce guidelines that are narrower and therefore easier to create. Seeking guidance in too many areas at once will result in no new guidelines.

“If you look at one big giant problem, it always looks insurmountable,” said Bonham. “But if you can break it down into smaller pieces and smaller steps, you can

accomplish anything. And I think we can do that with the Department of Labor.”

## Working with Others

A change Bonham is already making is shifting away from jockeying for position with other employee ownership groups, and working instead on our common goal—helping more employees become owners where they work.

He noted that he Tweeted a good luck message to the NCEO at the start of their conference, and his message was met with surprise by some.

He added that the Employee Ownership Foundation is helping the Employee Ownership Expansion Network, which is trying to establish new state centers. The Foundation has signed an agreement to serve as the network’s fiscal sponsor—an arrangement that helps an aspiring non-profit organization receive tax deductible donations through an existing non-profit.

“Their goal is to help grow the number of ESOPs, our goal is to help grow the number of ESOPs...why wouldn’t we do this?” Bonham asked rhetorically.

## New Research Shows Incredibly Wide Support for Employee Ownership

### Findings Released at National Conference Show Support Spans Political Affiliation and Applies to Employees and Customers Alike

The National Conference closed out with fantastic news for the ESOP community: New research released at the final General Sessions shows that employee owned businesses enjoy uniquely broad support among Democrats, Republicans, and Independents.

The research was funded by the Employee Ownership Foundation (EOF) and conducted by the Institute for the Study of Employee Ownership and Profit Sharing at Rutgers University.

## Great News

Based on an in-depth nationwide survey of 1,500 working Americans, the research found that:

- Employees’ preference for employee owned companies transcend ideological and partisan divides, with 74 percent of Democrats, 72 percent of Republicans, and 67 percent of Independents voicing a preference for employee ownership.
- Among respondents who cast a ballot in the 2016 presidential election, 76.5 percent of Trump voters and 75.5 percent of Clinton voters prefer employee share ownership.

“These results show that employee ownership is the equivalent of a political unicorn—something very large majorities of Americans agree upon, completely independent of political leanings,” said Jim Bonham, President of the Employee Ownership Foundation.

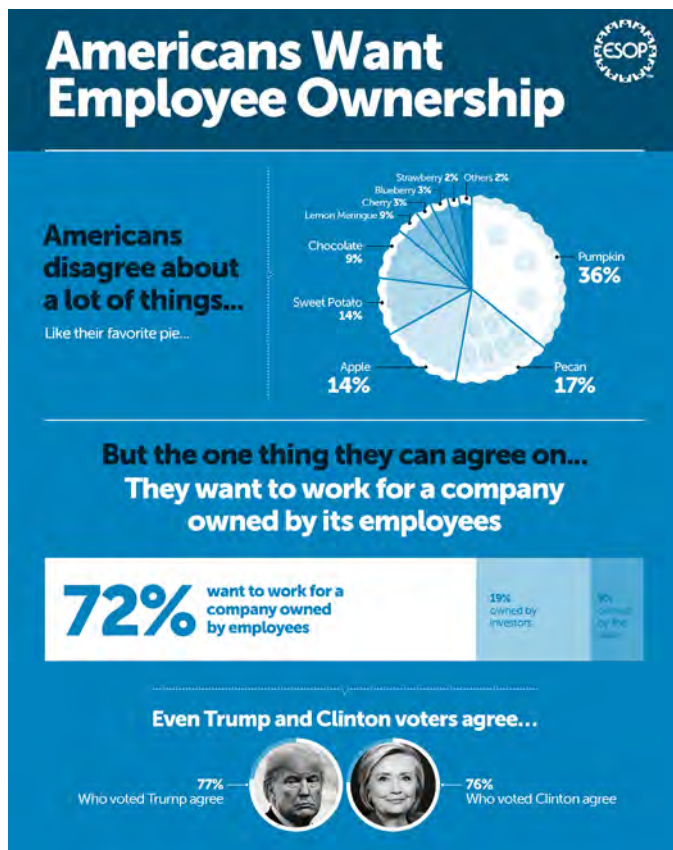
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"After decades in Washington," he added, "I can say this level of political agreement is truly unique and shows that employee ownership transcends our nation's political divide."

## Great for Business

The results found that employee owned businesses also enjoy a competitive advantage in attracting customers and new employees.

More than a third of respondents—38 percent—are more likely to purchase goods or services from a firm with employee share ownership.

The feedback from employees was even more dramatic, with 72 percent of respondents saying they would rather work for an employee-owned company than one owned by conventional shareholders or the government.

"Americans disagree about a lot of things, but this is not one of them," said Dr. Joseph Blasi, Director of the Rutgers Institute for the Study of Employee Ownership and Profit Sharing and the man who presented the findings to attendees. "Democrat or Republican, female or male, black

or white, union or non-union, a majority of respondents said they prefer to work for a company with employee share ownership. It is rare to find such a national consensus on anything."

The survey findings align with recent bipartisan support for employee share ownership on Capitol Hill. In 2018, the Republican chairs and Democratic ranking Members of the Senate and House Committees on Small Business co-sponsored the Main Street Employee Ownership Act. Signed last August, the law makes it easier for retiring business owners to sell to their employees through an ESOP.

## Great for Employees

The data also provide additional, powerful evidence of how employees stand to gain from sharing in the risks and rewards of ownership.

According to the research, at companies with an ESOP—the most common form of employee ownership—the average employee has a \$134,000 stake. This is far larger than the average 401(k) balance of \$103,700, reported recently by Fidelity Investments.

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Sharing such information with potential job applicants can only help make ESOP companies more attractive.

## Showing Your Colors

To reap the full benefit of these competitive advantages, ESOP companies must tell the world they are employee owned. Fortunately, the National Conference had shining examples of how to do that: One of the categories in the competition for the Annual Award for Communication Excellence focuses on employee ownership marketing.

Winners in this category excel at touting their status as employee owned businesses on their websites, company vehicles, logos, and in communication with job applicants and the public.

Those who attended the conference got to see the winning entries in person. If you missed the conference, you can still gain insights into better marketing your employee ownership by downloading the [Judges' Comments](#) for this year's winners and runners up.

([Video](#) of Dr. Blasi's presentation is available on The ESOP Association's YouTube channel.)

## Association Honors Former President

### New Award Is Named for J. Michael Keeling, President of 28 Years



Former ESOP Association President J. Michael Keeling addresses the luncheon crowd at the National Conference. On the easel behind him stands a framed tribute to him that was read into the *Congressional Record* earlier this year. A new award has been named in Keeling's.

**A**t the first luncheon of the National Conference, Immediate Past Chair Dave Fitz-Gerald ascended the stage and gave a heartfelt tribute to outgoing Association President, J. Michael Keeling. Dave's tribute was moving, funny, and inspirational—all worthy descriptions of the man to whom they were addressed.

Drawing on his many years of close interaction, Fitz-Gerald shared insights on Keeling's approach to accounting, his sometimes contentious relationship with technology, and his love of history and its lessons for today's leaders.

Turning more serious, he lauded Keeling for instilling in The Association a fervent appreciation for genuine

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grassroots advocacy. Keeling always maintained that Members of Congress care far more about the opinions of their constituents than of paid lobbyists; his deepest wish has always been that ESOP companies invite their Members of Congress to visit them and see for themselves what makes an ESOP company so special.

Fitz-Gerald was followed by new Association President James Bonham, who celebrated Keeling for understanding that good data is vital for good policy, and for playing a key role in building and running the Employee Ownership Foundation. Under Keeling's direction, the Foundation was instrumental in building the Institute for the Study of Employee Ownership and Profit Sharing at Rutgers University.

Through donations to the Institute, funding fellowships for students of employee ownership, and supporting symposia where employee ownership is discussed, the Foundation has helped ensure that the study of employee ownership survives and thrives.

Bonham informed the audience that, to celebrate Keeling's accomplishments, The Association asked that a tribute to him be read into the *Congressional Record*.

**"I've often thought, in the hereafter when I run into Jake Pickle, I'll say, 'Mr. Pickle, I worked for the people.'"**

Bonham presented Keeling with a beautiful framed copy of that [Congressional Record statement](#).

Finally, new Board Chair Gary Shorman took the stage to announce the creation of a new award in Keeling's name: The J. Michael Keeling Founder's Award will honor exceptional company founders who advance employee ownership by selling their businesses to an ESOP.

Keeling is the first recipient of the award, and will be the only recipient who is not a company founder. The plaque on his award reads: "The J. Michael Keeling Founder's Award; For a lifetime of sustained stewardship and service to The ESOP Association and the employee owner movement."

Keeling then took the stage, and thanked those in attendance for their kind words and for the honors they bestowed on him. And then, true to form, he spoke not of himself but of the ESOP community.

"As far as I'm concerned, it's not about me. It's about you," he told the audience. "You have made everything happen." He then shared a series of stories and experiences detailing how ESOP companies, and the people who work in them, are special and are worthy of respect and support.



From left to right, Gary Shorman, J. Michael Keeling, and Dave Fitz-Gerald pose with the new J. Michael Keeling Founder's Award.

He also told a story about his former boss, Congressman J.J. "Jake" Pickle, who was supported by Lyndon Johnson when he ran for Congress. After he was elected, Congressman Pickle called Johnson and offered his support for any bill the President might name. Johnson told Pickle: "When you vote, vote for the people." And hung up.

"I thank you. It's been a pleasure," Michael concluded. "I've often thought, in the hereafter when I run into Jake Pickle, I'll say, 'Mr. Pickle, I worked for the people.'"

## J. Michael Keeling: A Career in Review

Majored in Political Science at Yale University. Earned his J.D. from the University of Texas School of Law at Austin.

Served on the staff of Congressman J.J. Pickle from Austin Texas, rising to the role of Chief of Staff.

Served as a lobbyist for The ESOP Association and others.

Served for 28 years as President of The ESOP Association, from 1991-2019. During his time as President, he:

- Played a vital role in launching and running the Employee Ownership Foundation.
- Was instrumental in growing The Association's membership and revenue.
- Defended and expanded tax benefits for ESOPs.
- Played a key role in establishing The Association's network of 18 chapters.
- Wrote more than 2,000 pages in *The ESOP Report*.
- Gave more than 300 speeches nationwide.
- Personally visited nearly 600 ESOP companies.

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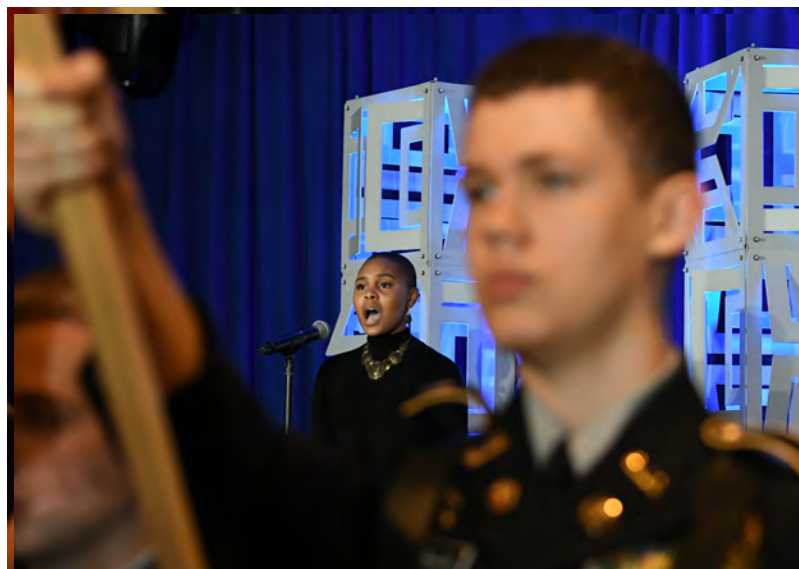
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## Now THAT Was a Rocking Conference

### Surprise Guests Show Attendees How to Party (Like It's 1999)

Anyone looking for the same old standard experience at this year's National Conference might have gone away disappointed. But from the looks of these photos, it seems like pretty much everyone we saw had a great time.

From an inspiring national anthem and presentation of our nation's colors, to a reception to beat the band, this was a special event. But don't take our word for it—take a peek for yourself. You might even see someone you recognize. To see more photos, visit our [Flickr](#) page.



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## Frank Luntz Inspires, Educates, Entertains in Knockout Presentation

### Insights Abound on ESOP Communication

The ESOP Association booked a keynote speaker for the last morning session of this year's National Conference, but it got so much more than that. Frank Luntz, a political and business communications expert, offered attendees on-point tactical and strategic advice, an inspirational and entertaining experience, and a potential ally, all at one time.

Luntz's presentation was ideal for anyone attending the premiere event on ESOP culture and communication.

From the start, Luntz identified a key issue for our community: He admitted that before accepting this speech, he did not know what an ESOP was—despite being familiar with employee ownership from decades of working in Washington.

That lack of familiarity may be a challenge, but Luntz offered suggestions we can all follow to help better communicate why ESOPs are such a powerful solution to so many of the issues facing our society and economy.

He shared research showing what Americans want most—which includes fewer hassles, more money, and no worries. He then engaged audience members in telling stories about how ESOPs can meet these needs.

One example: Because ESOPs offer better job stability than conventionally owned companies, employee owners are more likely to keep their jobs—which reduces their worries, helps them earn and save money, and results in a better lifestyle.

"Employees deserve to have more control over their life," said Luntz. "They deserve to have more control over their retirement, they deserve to have a sense of security, a belief that if they make a commitment to the company they work for, the company will make the same commitment back."

ESOPs, he said, are well positioned to address those issues and can do so by focusing on values that resonate



with Americans and include performance, merit, and earning one's rewards.

Luntz shared other facts that present both opportunities and challenges for the ESOP community. For example, distrust of business is at an all time high, 66 percent of Americans say it is harder to find a good job today, and 83 percent feel it is harder to reach and stay in the middle class—all despite historically low unemployment.

"Their fear is your opportunity," said Luntz, because employee ownership offers a tangible solution to those fears.

"Employee ownership is powerful, employee ownership is empowering, employee ownership is significant," he said. Describing it as a "no brainer," he wondered by there aren't 40 million people working for ESOP companies.

He then extended to our community an offer he had never made before: "I think this is the answer to all that insecurity that people have right now. So if you want someone to join you in this effort, I'll go see [Labor Secretary Alexander] Acosta with you."

expect these requests, they also are genuinely interested in hearing what you have to say.

By the same token, you are competing with other groups of constituents for the attention of your elected officials. Following the remaining rules can ensure your meeting request is accepted and that nothing gets in the way of your message being heard.

**Rule 2: Don't underestimate the power of Congressional staffers.** While everyone likes to meet with their Congressional Members, it can be even more important to meet with the staff. (Shhhhh....don't say that too loudly!) Staffers are assigned to key policy areas and become the in-house experts for the Members they serve. Staffers are the people you want to reach, because it is very rare that a Member will deviate from—much less reject—the recommendations of their staff experts, especially the ones who live and work in Washington.

Win over the staff on our issues and you will win over your Member of Congress.

**Rule 3: Give a reason for the meeting.** When you ask to meet your elected officials, state what you wish to discuss (such as support for an existing bill in Congress). Be clear and substantial. Catching up because you are in town is not a compelling reason for your Member of Congress to meet with you.

**Rule 4: Be prepared for the meeting.** You don't need to know everything about ESOPs, and no Member of Congress expects you to be a national policy expert. But if you are going to ask a Member for specific support, you need to understand what you are asking and why the employee ownership community deserves that support. Know the fundamentals and have materials on hand to back up your request.

(See our website for [documents](#) that can help you get up to speed and that you can leave with your elected officials once the meeting ends.)

**Rule 5: Know who you're talking to.** Part of being prepared is understanding your audience. Employee ownership has broad, bi-partisan appeal, but the way you talk about it to a Republican might differ from the way you discuss it with a Democrat.

Know who you are talking to, what their general philosophies may be, and then think about how employee ownership folds into their philosophies. The Association's staff can help you with these efforts.

**Rule 6: Be on time.** As my grandfather always taught me, being on time means being early—but not too early. Plan to arrive between 10 and five minutes before your scheduled appointment.

Even the best laid plans can go awry (especially in Washington, where traffic gets snarled early and often), so if you're running late call your Member's office and let them know. If you're going to be more than five minutes late, divide your group so some of you can arrive on time for the scheduled appointment.

### **Rule 7: Respect everyone in the Congressional office.**

Be kind and respectful to the people who greet you. Front office staffers in Congressional offices tend to be young and the rest of the staff tend to be very protective of them.

Be forewarned: Those who greet you serve as the front lines for your Member of Congress, and they are expected to listen to *everything* you say. When you enter a Congressional office, all of your interactions are part of your visit and may get reported to your elected official.

**Rule 8: Stick to the point.** Your meeting was granted to discuss ESOPs. Don't disrespect that by raising other unrelated interests or issues.

Sticking to the topic you came to discuss will enhance your credibility, show that you respect your elected official's time, and improve the odds that future meeting requests are accepted.

**Rule 9: We need to be united.** If some of our Members visit an elected official at 10:00 and take one position on a bill, then another group meets at 3:00 and takes a different position, guess what that Congressional Member will do?

Absolutely nothing.

Members of Congress won't support us if we can't even agree among ourselves which path is best.

**Rule 10: Be authentic.** Talk sincerely about the things you know best—such as your company story, or how ESOPs benefit your employee owners and your community.

Being authentic also means recognizing what you *don't* know. If you don't have the answer to a question, be honest and say so. Then offer to find more information and get back to your Congressional Member or staffer. That can provide a great opportunity to engage in Rule 11.

**Rule 11: Follow up.** During the meeting, get the business cards of any staffers who attend and make notes of any commitments made during the meeting. After the meeting, thank the staff and your Congressional Member for the meeting and reinforce any commitments they made.

Commitments may go both ways, so honor any that you make—such as providing dates for a site visit, or providing statistics or research about employee ownership.

Following up is vital, because you don't want this visit—no matter how well it goes—to be the last or only one.

Our advocacy strategy has always been built on a foundation of going local—inviting Members to visit your company and meet your employee owners. Once there, be sure they see what your business does and what your company culture feels like.

Cement in their minds that ESOPs represent real people with real jobs, and those jobs are generally more secure than at conventionally owned companies.

A visit to Capitol Hill is about bringing your company story to your Members of Congress and their staff members, and bright-lining the action we need our elected officials to take. The visit to your company is about sharing the feeling of employee ownership—and ensuring you create a lasting impression so your next request for a meeting or support is accepted quickly and without hesitation. €



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# Publication Highlight

## Report on Valuation Considerations for Leveraged ESOPs

This report covers the Advisory Committee on Valuation's studies of the issues involving the valuation of shares of companies with leveraged ESOPs. This is a must read for executives and those concerned with valuation issues.

Member Price: **\$ 12.00**      Non-Member Price: **\$ 38.00**

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REPORT ON

### Valuation Considerations for Leveraged ESOPs



The ESOP Association