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Foundation Launches New Website


EOF Site Offers Unique Resources and Information Aimed at Improving and Expanding Employee Ownership Nationwide

The Employee Ownership Foundation has long had a sterling reputation for funding cutting edge research on the benefits of employee ownership. And now it has a new website where it can report the results of the research it funds—and do much more to help promote and expand employee ownership.

This new site offers:

- [Research updates](#) in a new, concise format. These reports will distill the key research findings for you so you can get the facts and get on with your day. Want to read more detailed reports? The updates include links to the original source material, giving you all the options you could want in one place.
- A quick summary of [Foundation projects](#), so you can see at a glance how your donations are helping to advance and grow employee ownership.
- An easier mechanism for those applying for research funding. This will help the Foundation attract the best and brightest research projects, which will further strengthen efforts to expand employee ownership.
- A digital clearinghouse for [events and conferences](#) on employee ownership. Organizations can now share information about their events—and anyone looking to attend events will have a one-stop shop for finding the right content at the right time.
- An easier mechanism for donating online—and helping the Foundation continue its mission of expanding employee ownership so all employees have a chance to own a stake in the businesses where they work.

The new website is only one of many changes and enhancements on the horizon for the Foundation. Keep an

eye on the new website for updates on more new initiatives that will be launched soon and will help push the number of employee owned businesses to new heights! 

Take a Peek Inside the New Site:

Summaries of important initiatives funded by EOF donations are front and center, along with clear criteria for earning EOF grants.

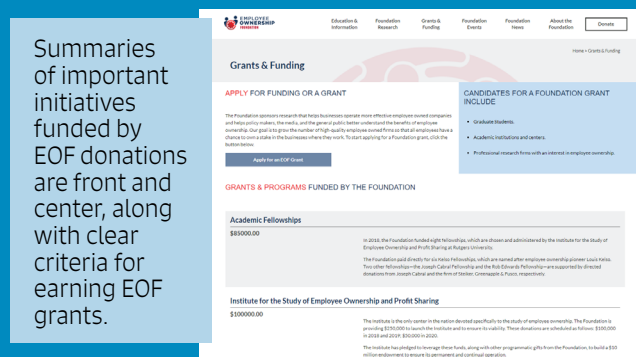
Employee Ownership Events

A core principal of the Employee Ownership Foundation mission is the promotion of employee ownership throughout the nation. Use this calendar of upcoming events as a one-stop location to find opportunities to meet others interested in employee ownership, learn, network, and become engaged in the employee ownership community.

UPCOMING EMPLOYEE OWNERSHIP EVENTS

Southwest ESOP Association Chapter Fall Conference - The ESOP Association San Antonio, TX Sep 12 to Sep 13 Marriott Rivercenter		Page 6: Registration Event Information
Power in Purpose - National Cooperative Business Association Sep 13 Maple Grove, Minnesota		Page 6: Registration Event Information
Multi-State Conference - The ESOP Association Pocono Manor, PA Sep 18 to Sep 20 Kalahari Resort		Page 6: Registration Event Information

Pages devoted to employee ownership events list relevant conferences and gatherings from a variety of organizations—offering one-stop shopping for anyone looking to learn more about broad-based ownership.



President's Column

Great Volunteer Leaders Make Organizations Great

By James Bonham, President and CEO, The ESOP Association

These first six months have gone by fast for me at The ESOP Association, and with fall upon us, our season of change is going to begin to show even more of its brilliant colors. In March and again in May, the TEA Board of Directors and other leadership committees began working with me and the other senior staff to examine what already worked well at TEA, and what worked less well. We examined what we didn't need or want to change, as well as what we could improve upon, make more simple, accessible, or fair.

Specific ideas are being put forward with an eye to making improvements and growing the value our members receive from our organization.

Some of those ideas, discussed and perfected over the summer months, were voted upon and adopted into new policies and structures by the Board of Directors during their August meetings in Philadelphia. As the staff turns these new directives and guidelines into actionable items, we will begin announcing the improvements over the next several weeks and months.

The first of those changes—a much more simple and fair membership structure—is described in the article on page 3 of this month's newsletter.


But, I feel compelled, after working with this extraordinary group of people now for the last six months, to observe how rich we all are with volunteer leaders who truly care about the future of our employee owners, their companies, and the professionals who help facilitate much of what we do.

Often, the strength of an organization can be measured by its leaders and the diversity of background and depth of knowledge they hold in critical areas. Using that measuring stick, it is impossible to look at TEA's leadership structure—including the State and Regional Chapter Council, its Executive Committee, the Professional Advisory Committees, the chairs of those committees, the Board of Governors, and ultimately the full Board of Directors—and see anything but tremendous strength and an almost embarrassing wealth of experience and knowledge. What's more is that they are a pretty fascinating group of people, too.

Think about this: Just on our 10-person Board of Directors, we have a published author of historic fiction,



a pilot with over 2,500 hours in the air, a first-generation immigrant who once sold vacuum cleaners door-to-door and is now CFO of his international corporation, and a guy who was once his university's mascot. We have executive assistants and CEO's who share equal standing and respect with their board peers. We have lawyers, accountants, HR professionals, and CFO's. And most importantly, we have a group of people who genuinely like each other, work well with one another and, I have learned, willingly put the organization before themselves each and every time.

I can attest that the decisions made by these groups have been treated with the same kind of diligence and thoughtfulness one might expect of such accomplished professionals. As the new President and CEO of The ESOP Association, I am blessed with many opportunities, but ranking near the top is the chance to work with your volunteer leaders. 

ESOP | Report



The Voice of The ESOP Association

The *ESOP Report* is published on a monthly basis by The ESOP Association, the national non-profit association of employee-owned companies and ESOP practitioners, located at:
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Third Keynote Speaker Added to the Las Vegas Conference Program

Seth Mattison to Offer Insights on Managing Culture and Other Changes in Light of Growing Global Digital Transformation

Any organization seeking guidance on managing its digital transformation will be excited to hear Seth Mattison's Thursday keynote presentation at Employee Owned 2019. Mattison is an international expert who helps category leading brands and high performance leaders navigate the future of work through actionable insights.

The need for Seth's insights has never been greater. Businesses today are entering the most significant era of global transformation the world has ever known. The boundaries between office and work, customer and supplier, and leader and follower—and the experiences created for customers and employees—are morphing rapidly due to ever evolving digital technologies.


As a result, today's businesses must remodel themselves to be agile, innovative, and customer- and employee-centric at their core. This will require organizational stewards to develop a new set of skills and competencies so they can effectively impact a business' trajectory.

Seth will demystify what digital transformation is and unpack the most pressing challenges facing organizations

on their path toward a more agile, innovative, and digitally competitive state.

Mattison is the third top-flight keynoter to be scheduled for [Employee Owned 2019](#), joining Sekou Andrews and Erica Dhawan.



For more information on the slate of special speakers, events, and activities at [Employee Owned 2019](#), visit us online. 

TEA's Modernization Initiatives

Results: New Technology and a Streamlined Membership Structure

The last six months at TEA have been jam-packed with efforts to modernize our infrastructure, re-envision our annual meetings and update our membership structure. These efforts are driven by a desire to provide higher value for your membership dollars and build greater capacity within our organization as we head into the next decade. We are pleased to report we are making excellent progress on all fronts.

At the headquarters in Washington, DC, we have now successfully updated some old and unsupported technologies; our outdated phone system has been replaced with a modern VOIP system that can now integrate with a rebuilt computer hardware system that allows staff mobility, greater cybersecurity, and is based on Microsoft 365 and its "futureproofed" concept. We are now well underway with an across the board update of our Association Management

System (AMS) with plans to launch a new membership user experience by the beginning of 2020. We're working on updating the TEA website and have already launched a new Employee Ownership Foundation (EOF) [website](#).

Those of you who attended our National Conference this past May in DC saw many changes take place with updated content and nationally known speakers. The upcoming Employee Owned 2019, taking place in Las Vegas this November 13-15, will be a game changer! In addition to three world-renowned keynote speakers invited to encourage out-of-the-box thinking about your ESOP, we'll also have a first of its kind "Innovation Stage" for the exhibit hall and we're launching a series for CEOs and pre-conference content for companies considering ESOPs.

The meeting will also feature a reception at the Eiffel Tower for attendees donating to the EOF.

If you haven't registered for Employee Owned 2019, don't miss your chance. Register today [online](#).


Membership Structure Simplification and Fairness

Last week, all TEA members were emailed regarding changes adopted by the Board of Directors to the membership structure for 2020. Motivated by a desire to simplify the structure, create greater fairness, and reduce

administrative challenges both for members and The Association, the new structure will take effect January 2020. The TEA membership structure will be reduced by five categories, from 14 to nine overall, and the confusing system of accounting and discounts for professional members will be eliminated and replaced with a single professional category, with all professionals being treated identically. Corporate Memberships to TEA will also be simplified but will continue to be based on the number of participants in an ESOP. The number of categories of membership will be reduced from eight to five categories.

The Professional Memberships will no longer be based on the number of members per firm, per office location, or business status. All Professional Members will now pay one low flat rate, making it easier for both individuals and professional service firms to budget for their TEA annual membership.

These improvements to our technological infrastructure, updated categories, new programming and services, and a more muscular approach to advocacy, will help TEA provide a much improved and a much more engaged experience for you.

We're excited to have you on-board as we work to improve your experience with TEA. We'd love to hear from you. How can we better help you run your ESOP? Email us at esop@esopassociation.org. 

Ownership Advantage

Financial Literacy Is Key to Creating an Ownership Culture

By John Williams, VP Sales & Marketing, Central States Manufacturing

Over the years I have talked to several business owners who want their employees to think and act like owners. They want them to be engaged and passionate about their jobs. They want them to enjoy coming to work. These owners often see setting up an ESOP as a way to change the organization's culture and instill the aforementioned traits of thinking and acting like an owner.

Two or three years later, I talk to some of the same owners, who at one time saw the ESOP as a cure for their culture problems and now are blaming the ESOP and the employees for their inability to create an ownership culture.

They say: "I started this ESOP thinking that it would make all my employees care about their jobs. It hasn't done anything. In fact, their behavior is worse now."

One would ask: "Why is it worse?"

The answer is that these owners were using leadership to manage employees before the ESOP and after the ESOP they quit leading and managing them at all because they thought the ESOP would do this for them. I've heard of several cases like this.

So, if the ESOP is not going to be the magic potion, what is? Taking the time to build your culture is the key. I'm going to share with you a method using open book management principles to help you create an entire organization of owners!

Please refer to the diagram on the next page. This model teaches your employees about how a business works by teaching them the financials and how they are influenced by employees' contributions. To maximize the potential of this process, all steps will need to be implemented. I will break down each of these concepts.

Financial Literacy

The one thing that usually separates owners from employees is that most owners know how the business works. They understand the profit and loss (P&L), balance sheet, and cash flow statements. They know what the current ratio and the debt to equity ratios mean. They know how accounts receivable and inventory affect cash.

On the other hand, most employees have no idea what any of this means. They also don't have any idea how they can influence all the numbers and percentages. So when they don't understand something, what do they do? They make something up based purely on perception.

Most employees think that the owners put about 50 percent of all revenue in their pockets. That's 50 percent net, after all expenses and taxes. If you don't believe this, survey your employees. They think they are doing all of the work and the owner is keeping all of the profit. It's all based on perception. Demystifying the business is a good way to start getting your employees to think like owners.

Share

It all starts with sharing the information. The information consists of the P&L statement, the balance sheet, and cash flow statement. It also could include reports broken down from the P&L such as COGS variances, or expense line items.

Several owners and leaders have concerns about doing this. They worry about the competition seeing this information, but most of all they worry about their employees seeing them.

Let's address each one of these concerns.

As far as the competition goes, these reports are the news—they report on things that have already happened. These reports don't tell competitors *how* your organization accomplished the things it did, and they don't offer a glimpse into matching your culture.

As for employees, they are much smarter than you give them credit for. If you share only good news, they will think you are full of it. They understand that business is like life: Bad things happen. Nothing is great all of the time. Also, if you are not transparent, they will make up something. Remember, they think organizations net 50 percent after taxes.

Being transparent with your financial statements and metrics is vital in building trust. Don't withhold bad information. Give them the Clint Eastwood version: The Good, The Bad, and The Ugly.

Teach

Sharing financials without teaching doesn't work. It is important that employees understand each line item and how those line items connect to the organization's

performance. Most important is helping employees understand how their actions affect each line item.

Start by creating courses that teach financials. Use tools in your training that relate to employees' daily lives, like balancing a check book or calculating their net worth. Teach them exactly what the organization's net income after tax really is. It is probably more like 6-10 percent, rather than 50 percent.

To sustain the training, get employees involved. Have them lead meetings where they review the financial statements. Give them line item responsibility for expenses over which they have control. For example, let the office administrators have responsibility for office supplies on the expense line and have them forecast and report the actuals each month. Take every opportunity to teach, teach, and teach.

Make a Difference

Making a difference refers simply to allowing your employees to make decisions. How can you expect them to have an ownership mentality when they can't do this? Yes, it's true—they are going to make wrong decisions from time to time.

Owners make wrong decisions

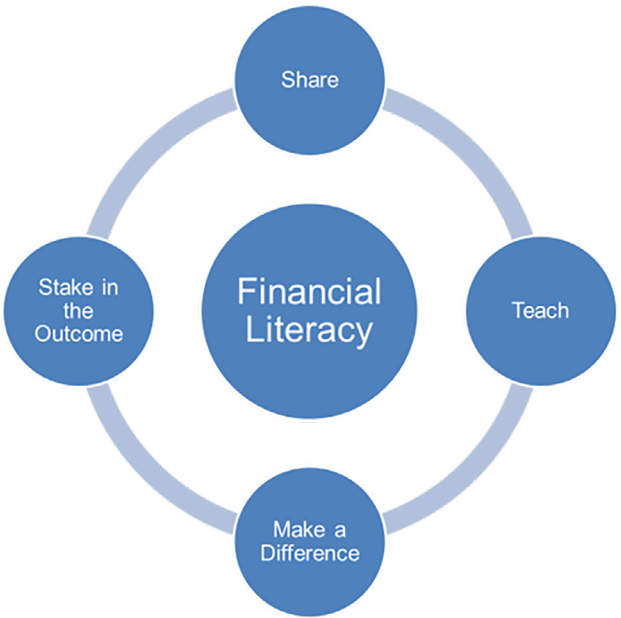
too.

Most of the time when you give employees this responsibility, they want to be successful—and they will be, most of the time. Don't let two wrong decisions overshadow 50 right ones. The bottom line is people don't wake up in the morning and say, "I'm really gonna suck at work today!" People want to succeed. It's human nature.

Stake in the Outcome

This is where the ESOP is part of the equation. If you want everything to work according to this plan, there must be some reward for a job done well--and some form of detriment if objectives were not met. This sounds very much like the risks the owner of an organization has! Don't underestimate the power of this. It validates employees' work and makes them part of the business.

Giving people a stake in the outcome can be done in a variety of ways, such as bonuses, commissions, profit sharing, and—my favorite—an ESOP. The reason I like the ESOP so much is because you are actually giving equity to the employees. For all other forms, make sure you tie their objectives to the decisions they make. They can make a difference! What they do matters!



Conclusion

Hopefully, this helps solve some of the issues regarding getting employees to act like owners. This will in turn help create and sustain an ownership culture in your organization. Let’s go through the steps again.

- Share the financials and other data with them. The P&L, balance sheet, cash flow statement, etc.
- Teach them the business using financial literacy as the tool.
- Give them the authority to make decisions. Use the wrong decisions to teach. Trust me, they will want to learn.
- Set up an ESOP. This actually *makes* them owners. Even though you may have an ESOP, you can still incorporate bonuses, commissions, prizes, etc.

This approach will take time and effort to implement and sustain. You have to be intentional about it. All your leadership must buy into this first. There will be bad and

good days. Hang on. This sounds exactly like what an owner goes through. Exactly!

I am 100 percent certain that if I talked to all the owners who have successfully created and sustained an ownership culture, they would say it was worth the effort. I’m also 100 percent certain the employees would say the same thing.

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

Oct. 1-31	Employee Ownership Month
Nov. 13-15	Employee Owned 2019, the Conference and Trade Show for ESOPs
Dec. 1-4	Leading in an Ownership Setting
Feb. 6-7	ESOP Professionals' Forum

To see the full list of .ESOP Association meetings, visit us online at: www.esopassociation.org

Washington Report

The ESOP Association Joins an Industry Leading Coalition to Oppose a Potentially Emerging Tax Threat to ESOP Companies

By James Bonham, President and CEO, The ESOP Association

The proposals for the so-called Financial Transactions Tax, or FTT, may still be in their most nascent stage of the policy-making process, but The ESOP Association is already engaging with other entities to oppose this new potential threat to employee owners and ESOP companies. Action is called for now because some version of the FTT has been included in a number of different bills introduced recently in Congress—such as the Wall Street Tax Act (S. 647), and the Inclusive Property Act (H.R. 2923)—and are being promoted by some Presidential candidates.

This proposed tax provides the revenue to achieve unrelated policy goals, such as universal health care or free college tuition. None of these bills are positioned to become law in the current Congress. However, just the fact that the FTT is now appearing in several higher profile bills, and is being discussed on the campaign trail, is enough to cause The ESOP Association to engage on behalf of our membership.

What Is the FTT and Why Do We Care?

The FTT idea has been around capital markets for over 300 years, and has even been adopted in some countries. In its

most simplified form, the FTT is the imposition of a tax upon the sale or transfer of a security (stock).

In some instances, the FTT would be applied to the seller, in others, to the buyer. Some proposals would apply the tax only to publicly traded securities or financial instruments, such as futures or derivatives.

Some analysts believe certain FTT proposals also could apply to the purchase or sale of privately held securities. This would potentially penetrate the sphere of securities owned by ESOPs or the shares of privately held corporations sold during the formation or expansion of an ESOP.

Employee owners should oppose the FTT in any of these instances, and this is why: Most directly, some analysis suggests that if the FTT were to be applied to private security transactions, it could impose a new cost for ESOPs or employees in a number of situations, including when:

- Shares are repurchased from retiring or departed employees.
- The ESOP’s percentage of ownership in a company is increased.
- Shares are transferred into an ESOP trust.

The threat goes beyond these concerns, however. When applied to publicly traded securities, the FTT would impose

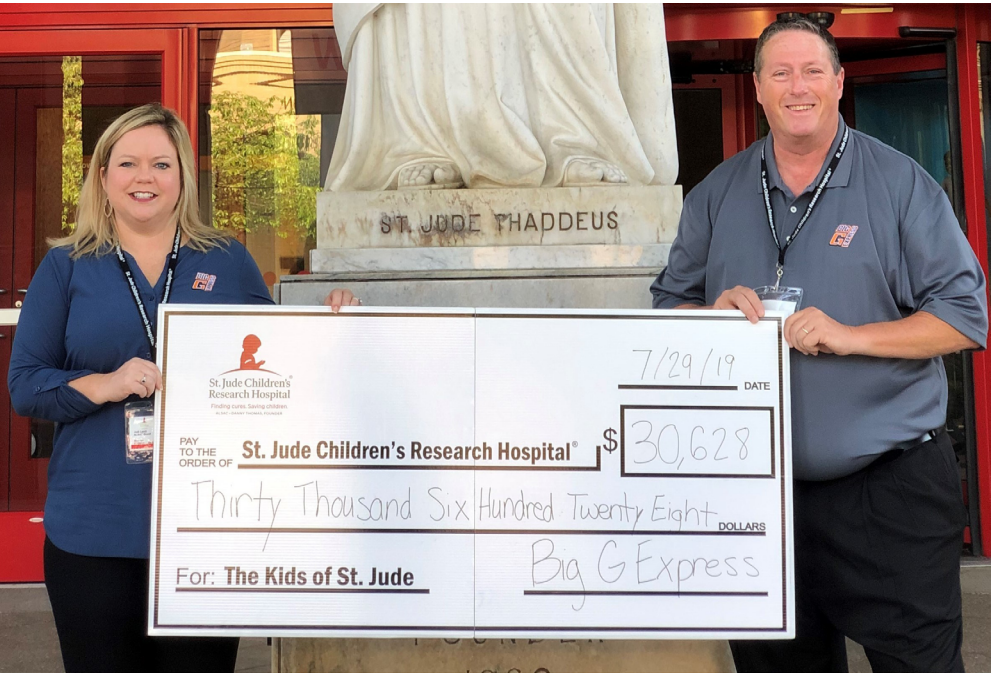
A Driving Force

Tim Chelette, right, a driver for the past 15 years with ESOP Association member Big G Express, is serious about giving to others and about being safe on the road.

For the past four years, Chelette has organized and run a motorcycle ride that has raised more than \$30,000 for St. Jude’s Children’s Research Hospital. Pictured with Jodi Lamb, Big G’s manager of marketing and communications, Tim holds a check showing the amount raised through his efforts.

Chelette also has driven more than 1.9 million accident-free miles delivering freight, and gives presentations on safety across the nation.

For his efforts, Chelette won top honors in the Pilot Flying J Road Warrior contest. First place winners are awarded a \$10,000 prize.




significant new costs for the employees who hold 401(k)s or other retirement accounts. According to survey data, our members almost universally offer 401(k)s to employees as a critical part of retirement planning and to ensure a diversified approach to retirement investing. Typically, 401(k)s are invested in large funds that would be hit hard by transaction taxes as those funds buy, sell, and even rebalance according to their investment guidelines.

Those new expenses ultimately would be borne by the owners of the 401(k)—your employee owners.

The ESOP Association has joined with other leading lobbying organizations to oppose the FTT.

TEA Invited to Join Leading Coalition

As the voice representing employee owned businesses, TEA has become part of a coalition that includes representatives from multiple areas, such as: the Securities Industry and Financial Markets Association, the U.S. Chamber of Commerce, the American Benefits Council, the Insured Retirement Institute, the American Council of Life Insurers, and the National Association of State Retirement Administrators, among others. The coalition meets monthly to share information and collaborate on strategy.

Organized as a 501(c)6 organization, TEA enjoys the legal ability to spend its funds to actively lobby Congress and the Administration. The Association is a registered lobbying entity for employee owned companies, and has done so aggressively over its 43 years in existence. 

Legal Update

Ninth Circuit Reverses Position on Arbitration of ERISA Claims

By: Jay Van Heyde, Shareholder, Dean Mead, Orlando, Florida
Edited by Julie Govreau, Senior Vice President and Chief Legal Counsel, Greatbanc Trust Company, Lisle, IL

On August 20th, the Ninth Circuit Court of Appeals issued both a published opinion (*Dorman v. The Charles Schwab Corporation*, 2019 WL 3926990 (9th Cir., August 20, 2019) and a companion, unpublished opinion (*Dorman v. The Charles Schwab Corporation*, 2019 WL 3936944 (9th Cir., August 20, 2019) in a non-ESOP, ERISA case involving a 401(k) plan. The case offers important

legal guidance in the area of arbitration provisions in ERISA qualified plans—which includes ESOPs.

In the published opinion, the court held that their long-standing position on arbitration provisions in ERISA plans was no longer binding precedent in that circuit. Since 1984, *Amaro v. Continental Can Co.*, 724 F.2d 747 (9th Cir. 1984) had stood for the proposition that ERISA claims could not

be determined by arbitral proceedings, and that arbitrators generally lacked the competence of courts to interpret and apply ERISA as Congress intended.

In the unpublished opinion, which is not regarded as legal precedence but nonetheless offers informative guidance, the Ninth Circuit addressed each of the positions taken by the District Court. The unpublished opinion also explains the Ninth Circuit’s reasoning in denying the Schwab defendants motions and allowing the class action lawsuit to proceed.

The case has been reversed and remanded to the District Court, where arbitration of individual claims will occur, limited to seeking relief for the impaired value of Dorman’s account resulting from the alleged fiduciary breaches. Dorman was not permitted to bring the action as a class action lawsuit.

In the published opinion, the court stated that subsequent to 1984, the Supreme Court had ruled that arbitrators are competent to interpret and apply federal statutes, citing *American Express Co. v. Italian Colors Restaurant*, 570 U.S. 228 (2013), and that federal statutory claims generally may be subjected to arbitration.

Background

Michael Dorman was employed by Schwab from early 2009 until October 8, 2015. He was an active participant, making salary deferrals in the 401(k) plan. He withdrew his entire account balance in December 2015.

Notwithstanding an arbitration provision and class action waiver in the plan document, in June 2017, Dorman filed a class action complaint asserting claims for all class members under ERISA Sections 502(a)(2) and (3). Section 502(a)(2) permits a participant to seek relief under ERISA Section 409 for a breach of fiduciary liability.

The complaint alleged that the Schwab defendants had

Here, the participants waived their right to be part of a class action by virtue of continued participation in the amended plan.

breached their fiduciary duties under ERISA Section 409. According to the complaint, Schwab engaged in prohibited transactions by including in the plan’s investment options Schwab-affiliated investment funds that were alleged to be poor performers and were included and maintained in the plan to generate fees for Schwab entities.

The Schwab 401(k) plan was amended in December 2014 to add an arbitration provision that became effective January 1, 2015. The court noted that Dorman was an active participant in the plan at the time of the amendment. The amendment language was broad in scope, stating that “[a]ny claim, dispute or breach arising out of or in any way related to the Plan shall be settled by binding arbitration...”

This new language also included a waiver of class or collective actions that required individual arbitration. The amendment further stated that any arbitration would be

conducted “on an individual basis only, and not on a class, collective, or representative basis,” and that participants waived their right to be part of a class action.

The Schwab defendants moved the District Court to compel individual arbitration, but the motion was denied.

The Decision

In the unpublished opinion, the Ninth Circuit addressed item by item the rationale of the District Court’s decision.

First, the District Court ruled that Dorman was not bound by the arbitration provision. But the Ninth Circuit stated that Dorman was a participant for nearly a year while the provision was in effect, so he had in fact agreed to be bound by it.

The Ninth Circuit judges also stated that ERISA Section 502(a)(2) claims belong to the plan, and they found that the plan had in fact agreed to be subject to arbitration. After all, the company and the fiduciaries had amended the plan.

And finally, it was noted that the claims made by Dorman did “arise out of” and “relate to” the plan, and thus they squarely fell within the language of the arbitration provision.

The District Court also had held the arbitration provision invalid, stating that the plan fiduciaries added the arbitration provision after they were sued and that under the rationale of *Johnson v. Couturier*, 572 F.3d 1067 (9th Cir. 2009), the plan fiduciaries could not insulate themselves from fiduciary responsibility by amending a plan document.

The Ninth Circuit found that position was factually incorrect (the plan was amended years before the complaint was filed and more than 10 months before Dorman had even terminated employment.) More importantly, the court stated in the unpublished opinion that such reliance on *Johnson v. Couturier* was misplaced because the amendment was not an effort to insulate fiduciaries from liability.

An agreement to conduct arbitration does not relieve a fiduciary from responsibility or liability. Instead, arbitration was stated to be a forum that could offer a quicker, more informal and less expensive way to resolve an issue.

Once it was established that the dispute fell within the arbitration provision, the Ninth Circuit ruled in the unpublished opinion that the District Court must order arbitration unless the provision is found to be unenforceable under generally applicable contract defenses, such as fraud, duress, or unconscionability. Dorman had not alleged such defenses, so individual arbitration was ordered.

The court emphasized that the arbitration was to be on an individual basis. One cannot be ordered into class-wide or collective arbitration unless agreed to. Here, the participants waived their right to be part of a class action by virtue of continued participation in the amended plan.

In conclusion, the *Dorman* published opinion and unpublished opinion collectively represent a continuation of the evolution of the law relating to arbitration provisions

and class action waivers. The trend clearly favors the enforceability of arbitration clauses in ERISA matters, but ESOP sponsors would be well advised to carefully consider with their ERISA/ESOP counsel whether to adopt an arbitration provision.

The presence of an arbitration clause is not a panacea for all litigation fears or concerns, and certainly does not guarantee a favorable result for ESOP sponsors and fiduciaries. Plan sponsors must consider a wide range of factors. The arbitrator may not have the expertise to

understand ESOPs and ERISA, leading to an unfair and/or unjust result. And arbitration awards generally are binding and not appealable. Thus, it is possible to end up with a bad result and no place to turn.

On top of that, most ESOP sponsors have indemnification provisions and fiduciary liability insurance in place. All these things (including the specific language of the documents) must be reviewed and coordinated so that nothing falls between the cracks in the event the ESOP is amended to provide for arbitration. [E](#)

Jeff Mounts, Winner of the 2019 Employee Owner of the Year Award

Winner Shows Creativity and a Passion for Telling the ESOP Story

Jeff Mounts, Marketing Manager at ESP International, absolutely loves a certain quote. When you hear it, you understand a lot about Jeff, why he has become an invaluable member of the Communications Committee at ESP International, and why he earned The ESOP Association award for 2019 Employee Owner of the Year.

That quote? It’s from Albert Einstein, who said: “Creativity is intelligence having fun.”

Take a look at what Jeff has helped ESP accomplish in a short time, and you see a living representation of that blend of intelligence and fun Einstein so eloquently described.

In the Beginning

When Jeff joined ESP five years ago, he did so based on the recommendation of his college roommate and with the goal of shortening his commute. The ESOP? He had no idea what

that was. But he learned quickly. And as a member of the Marketing Department, he soon joined the Communications Committee and became involved in marketing ESP’s ESOP.

Initially, Jeff wanted simply to educate himself, but the committee soon found he was a natural at educating others too. Leveraging his graphics and video skills, Jeff personally produced a series of short videos that are now some of the company’s best ESOP education content.

Later, as co-chair, he led the creation of the committee’s strategic plan and challenged the team to create innovative ideas to educate and engage employee-owners.

Communicating Internally and Externally

ESP’s Communications Committee exists primarily to educate ESP employees about their ESOP and to increase

Jeff Mounts holds his award for the Employee Owner of the Year. Mounts was honored during The ESOP Association’s Awards Ceremony in Washington DC in May, which kicks off the National Conference.

Pictured, from left to right, are: ESOP Association board members Derrick Vick and Missy Pieske; Board Chair Gary Shorman; Mounts; and ESOP Association Chapter Development Officer Dan Marcue.



employee owners’ business literacy. But it also works to share information about ESOPs to external audiences. For example, the company has repeatedly and successfully engaged its elected officials in Congress. In fact, Iowa Congressman Dave Loebsack (D-IA-2), has visited ESP locations multiple times.

The group also works externally to educate the community about employee ownership—or, as Jeff puts it, to “make the ESP story public.” He has found that the website has become an incredibly important vehicle for carrying ESP’s message about its ESOP to a broader audience.

One of the ways the company engages the broader community is through its Charitable Foundation. Each year, ESP employees vote for the charity they would like to see the Foundation sponsor. Throughout the year they host fundraisers and donate a majority of the proceeds to that charity; the remaining funds are used to support other local non-profits.

The 2019 Charity of the Year was [The Freedom Foundation](#).

How Does ESP Celebrate EOM?

Another way that ESP educates employees and the community is through its October Employee Ownership Month (EOM) activities. With a full calendar of events planned down to the day, ESP takes EOM to the next level.

Activities include an EOM poster competition, company-wide ESOP Trivia Tuesdays, Business Literacy Thursdays, a can drive for charity, and more!

Clearly Jeff and his fellow committee members have taken his favorite quote to heart, using creativity to make business intelligence and ESOP education fun.


(For EOM resources check out The ESOP Association’s [EOM web page](#).)

Sharing: Key to Success

One of Jeff’s suggestions is to tap the existing knowledge of employee owners in other companies.

“Don’t be afraid to lean on other employee owned companies,” he says. “The Association has some pretty amazing members who are open to sharing ideas, who are willing to share what worked, what didn’t work.”

He notes that ESP is fortunate to be located in an area with lots of employee owned companies, and he and his fellow employee owners regularly reach out to the region’s employee ownership brain trust. “We do a lot of networking and information sharing,” Jeff says. “We’ve held round tables and attended networking events in between conferences to discuss challenges, opportunities, new ideas.”

His final bit of advice: “Enjoy the fact that your owner decided to sell the company to you, the employee. It’s such a unique and amazing benefit.” 

participants accept the sale. Some buyers (and sellers) will not complete the transaction if significant numbers of employees do not agree with it.

When pass-through voting is required, ESOP participants must be given sufficient information to make an educated decision about the sale. Participants must receive a disclosure statement that includes financial information, a complete explanation of the sale transaction, and a list of the risks if the sale were to be consummated (or not consummated, in some cases). The purchase agreement between the buyer and seller should be in final form and even may be signed (contingent on the closing), before the participant disclosure statement is issued, so that accurate information is included.

The ESOP participants must be given a reasonable period of time to make their voting instruction decisions. The ESOP plan document or trust agreement may address this period of time, or state law may require a minimum period for voting.

The participants must be able to submit their instructions to the trustee, record keeper, or an independent third party so their individual instructions are confidential and not communicated to the buyer or seller. Whoever receives the voting instructions likely will need some time to tabulate votes before the final closing of the transaction.

Based on the above requirements, it is important that the buyer and seller understand that pass-through voting can add another three or four weeks to the timeline for the transaction. And preparation of the disclosure statement adds increased cost to the transaction. Most buyers and sellers try to lessen the time and the cost of the sale, so this information should be provided up front, before the LOI.

ESOP Distribution and Diversification Payments

What if the ESOP usually makes distribution and diversification payments at a certain time each year, and the company is in the sale process at that time? The seller may not want to reveal the potential sale to employees yet if there is a chance it will not go through. So, when the ESOP participants start inquiring about distributions, what can be done?

Some ESOP companies make the payments as usual. However, almost always, the sale price for the company is greater than the most recent valuation. If the company is sold a month or several months later for a higher price than was paid to distributees, it is likely those participants will feel cheated.

Best practice is to have an agreement either by the board of directors, or between the seller and buyer, to pay the distributees the difference between the most recent valuation and the sale price, as an additional payment following the close of the transaction.

If the ESOP company is not concerned about letting participants know about the potential transaction, or if

participants are not expecting distributions at a particular time, the company may amend the ESOP to freeze distribution and diversifications until after the transaction so they can be paid at the correct value.

Neither of these options may be best practice for ESOP administration, but they do give the ESOP company a way to handle distributions without interfering with the sale transaction.

ESOP Termination Amendment

In the majority of sales of ESOP companies, the ESOP is terminated or frozen right before the transaction closes (the exception is if the buyer also is an ESOP company). The ESOP should be amended to freeze all eligibility, contribution, service and compensation provisions, and to immediately 100 percent vest all existing accounts.

The ESOP also may be amended to alter the distribution provisions, possibly including a partial distribution of sales proceeds shortly after the consummation of the sale. If the sale transaction includes escrows or earn-outs that may be paid months or even years following the closing, the ESOP will be frozen but not terminated before the transaction.

Pass-through voting can add another three or four weeks to the timeline for the transaction.

The ESOP should be terminated after all transaction proceeds are paid, in order to comply with the rule that plan assets must be completely paid out within a year following termination of the plan.

Ongoing ESOP Administration

For as long as the ESOP exists before it is totally paid out, ongoing administration is still required. If the wait for escrows to break is two or three years, the ESOP must be amended for required changes, annual statements must be provided to participants, and Forms 5500 must be filed.

If the company sale was an asset sale and the company stock remains in the ESOP, that stock must be valued annually (although the valuation may be based only on cash or other liquid assets needed for the wind down of the ESOP and the business).

In addition, there will be an increased need for communication to participants. They likely will question why they must wait for their ESOP benefits, and how long that wait may be. Good communication can make it easier on the company and the people responsible for answering participant questions.

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

Advisory Committee on Administration

What Happens to an ESOP in Preparation for Sale of the Company?

By [Lisa A. Durham, Partner, Krieg DeVault](#)
Reviewed by [Dolores Lawrence, Managing Director, Blue Ridge ESOP Associates](#)

The merger and acquisitions industry is booming these days, so it is not surprising that sales of ESOP companies are common these days. This article addresses what an ESOP company and its plan participants go through when preparing for the sale of the business.

Stock vs. Asset Sale

Stock sales and asset sales will affect an ESOP company in different ways.

Under a stock sale, shares of the company—including those held by the ESOP—are sold in exchange for cash from the buyer.

An asset sale is the purchase of a company’s individual assets and liabilities by the buyer. In an asset sale, the company stock remains in the hands of the shareholders

and the ESOP until the shell company is completely wound down.

The letter of intent (LOI) or term sheet between the seller and buyer will explain the negotiated terms of the sale and whether it is an asset sale or a stock sale.

Pass-Through Voting

Section 409(e) of the Internal Revenue Code (known as the Code) contains statutory requirements for allowing ESOP participants to instruct the ESOP trustee how to vote the shares of company stock in their accounts.

Under the Code, pass-through voting rights are required for an asset sale and certain types of mergers.

Although pass-through voting is not statutorily required for a stock sale, some ESOPs do provide for pass-through voting in these types of sales—usually to ensure the ESOP



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