

Influential Federal Judge Belittles ESOPs and Employee Ownership!

(Judge Richard A. Posner*)... The time may have come to rethink the concept of an ESOP, a seemingly inefficient method of wealth accumulation by employees because of the underdiversification to which it conduces (though remember that what is important is the diversification of the employee's entire asset portfolio, including his earning capacity, rather than whether an individual asset is diversified). The tax advantages of the [ESOP] form do not represent a social benefit, but merely a shift of tax burdens to other taxpayers. Nor are we aware of an argument for subsidizing the ESOP form, as the tax law does, rather than letting the market decide whether it has economic advantages over alternative forms of business structure. As for the notion that having a stake in one's employer will induce one to be more productive, the evidence for such an effect—see "Motivating Employees with Stock and Involvement," NBER Website, Apr. 25, 2006, <http://www.nber.org/digest/may 04/w 10177.html>; Joseph Blasi, Michael Conte & Douglas Kruse, "Employee Stock Ownership and Corporate Performance Among Public Companies," 50 *Indus. & Lab. Rel. Rev.* 60 (1996)—is weak and makes no theoretical sense. An employee has no incentive to work harder just because he owns stock in his employer, since his efforts, unless he is a senior executive, are unlikely to move the price of stock. Nor is employee stock ownership likely to forge sentimental ties between employees and employers that might cause the former to work harder, although it may alleviate union pressures for wages or benefits that would jeopardize solvency. *Summers et al v State Street Bank and UAL Corporation ESOP Committee et al*, Case Nos. 05-4005 and 05-4317 (7th Cir. June 28, 2006), pp 13-14..... [Underlined added for emphasis.].

*Judges Diane P. Wood and Terence T. Evans joined Judge Posner's Decision.

Commentary: The view of ESOPs and employee ownership expressed by Judge Posner is becoming more common among Federal officials, media commentators, and members of Congress and their staffs! The ESOP community must speak out to defend ESOPs, as the view of ESOPs as expressed by Judge Posner, and others is just wrong!