ESOP | Report

November 2019 | The Voice of The ESOP Association | *Serving the Entire ESOP Community*

Inside this issue:

A New Era Begins for EOF Fundraising

Event Raises $500,000; Donors Challenge Others to Give As Well

What started as an elegant evening to raise funds for the Employee Ownership Foundation (EOF) ended up launching a new era—one in which generous, long term pledges offer the promise of reliable funding that can be the basis for future EOF programming and planning.

The fund raising event—which celebrated a coming decade of employee ownership, the roaring 2020's—raised more than $500,000 for the EOF. Held 10 stories above the Las Vegas strip in the Eiffel Tower restaurant, it marked a new beginning for generating funds for the EOF.

The evening and the fund raising both received a huge boost, thanks to Eagle Communications and the charitable organization named for Eagle's founder—the Robert E. & Patricia A. Schmidt Foundation. Gary Shorman, Eagle's Chairman and CEO, announced that the Schmidt Foundation would make a five-year, $100,000 pledge to support the EOF; he asked other companies to do the same.

"We want to inspire more companies to make long-term commitments because these make it possible for the EOF to plan and budget for more impactful long-term programs," Shorman said. "The EOF is vital to growing employee ownership, and we need to provide it with stable, long-term resources."

Others quickly took up the challenge.

Dave Ferraro, President of Vermont-based Carris Reels, pledged a five-year $50,000 contribution. And at the request of immediate EOF past chair Mark Lomele, San Francisco-based Recology matched Eagle's contribution with another five year, $100,000 pledge.

Others at the event soon followed suit: Raman Venkat, CEO of LeFiell Manufacturing in Los Angeles, pledged $50,000, and the CEO of CTL Engineering, CK Satyapriya, made a similar pledge.

"I'm overwhelmed by the commitment these leaders are making to employee ownership," said Cindy Turcot, Chair of the EOF's Board of Trustees. "We plan to take these initial pledges and seek out others who will help us build a brighter future for employee ownership."

Jim Bonham, EOF President, echoed Turcot's call to keep the donations coming. "We can't thank these donors enough for the amazing launchpad they have provided for EOF fundraising. Now we ask other ESOP companies and employee owners to consider adding the EOF to the list of organizations they support through regular donations."

Bonham also noted that Recology ranked as this year's largest single contributor to the EOF, making a $65,000 contribution. Even more impressively, those funds were donated almost entirely by employee owners. Recology conducts an annual fundraising drive among employee owners, whose personal contributions are bundled and presented to the EOF in one lump sum.

"Recology's efforts are so meaningful," said Bonham, "because they show that those who benefit from employee ownership are willing to invest from their own pockets, from their own shared rewards, to give others the chance to own a stake in the companies where they work. I encourage other companies to follow Recology's outstanding example."

The donations to the EOF—both one-time contributions and long-term pledges—will help the EOF continue funding cutting-edge research as well as expand the organization's programs. The EOF's goal is to raise the profile of employee owned businesses and to make forming employee owned businesses—ESOPs, in particular—less daunting and more attractive. A huge wave of retiring business owners offers a rare chance to dramatically expand the number of employee owned firms, and the EOF is poised to seize this opportunity.

Ownership Advantage

What's Fun Got to Do With It?

By Cathy Ivancic, Co-Owner and Consultant, Workplace Development, Inc.

Attend an employee ownership conference or a chapter event and you're bound to run into the ESOP zealots who want you to interact with others at your table or play a game. Perhaps you planned on sitting in the back anonymously, but then you got roped into an activity or even some nutty competitive superhero challenge.

These games and interactive activities are quite prominent in our employee ownership community, both inside companies and at our conferences.

Some balk at the "forced fun" saying, "Our folks don't need the hype; they just need the facts." This might be true, if employee owners were always poised to internalize what it means to be an owner after hearing the facts.

After more than 30 years teaching ESOP and business concepts to people who are not pre-motivated, we know there are practical reasons for using games, interactive learning, business simulations, and fun challenges.

Consider that ESOPs have a complex set of concepts to communicate—and that non-ESOP companies do not have this same challenge. In addition, we need to communicate these ideas with a passion that inspires action, or we won't get the full benefit of shared ownership.

The fun and games we help our clients implement are purposeful business strategies—designed to accelerate business savvy and help people move from being "hired hands" to engaged employee owners. Two-way conversations and interaction are essential for building the kind of enthusiastic ownership thinking that leads to high performance.

We All Need an Excuse to Pay Attention

Without delving too deeply into adult learning theory, we won't learn new stuff or try on a new mindset unless we have a reason to do it. Enter fun and games.

Ownership thinking is something we need to practice. Friendly competitions, business simulations, small rewards, certificates, and the like help encourage employee owners to focus on the ESOP long enough to catch the enthusiasm.

Ownership Models in Our Heads Don't Cut It

Human beings develop shortcuts in thinking that come from prior experience. And that applies when we consider familiar types of ownership: partnerships, home ownership, sole proprietorships, or public company ownership. Here's the rub: These shortcuts don't always translate well for understanding ownership in an ESOP.

Technically speaking, an ESOP is a retirement trust that owns employer securities. This sterile definition can be too passive because most companies want ownership to be about active employee engagement, recognizing that everyone's job can impact performance.

An interactive activity helps us suspend what we think we already know about ownership for just a moment, to make room for a shared understanding of what employee ownership is, what it is not, and what your company wants it to be.

People Learn in Different Ways

Last week I ran a business education session for an ESOP committee that included salespeople, mechanics,

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The Voice of The ESOP Association

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administrative staff, and people who work in a warehouse. After the "lecturette" on how job-level performance impacts stock value, the group competed in a challenge where they sort through cards as a team. Right on cue, when a team member forgot a very basic concept, someone joked loudly, "Dude, we just talked about that five minutes ago!"

Lectures and written information are among the least effective ways to get new ideas into our permanent memory. We need to actually *do* something with them to make them our own.

Enter group interaction, challenges, and game-like experiences, which can engage us physically, mentally, and emotionally. These techniques get us to actively apply what we've passively read about or been told—making the concepts more likely to stick.

New Ways to Cover the Same Information

Experienced ESOP Communication Committees, HR leaders, and managers know that the annual statement and the Summary Plan Description (SPD) are inadequate to fully communicate what it means to be an ESOP participant. Some ESOPs cover this information in an annual meeting when statements come out.

But as time goes by, even your most enthusiastic ESOP advocates can grow weary of the same slide show. Here's where a challenge, simulation, or a game can deliver the messages in a different way.

Strengthening Human Connections Is a Business Strategy

Tapping into the motivational impact of having an ESOP requires that people understand what it is and how it works, and feel secure about how their role contributes to the group's goals. The games and group activities do more than teach ESOP and business content, they also provide an opportunity to let down our guard and strengthen interpersonal connections.

Strengthening trust and teamwork can positively impact a variety of other business objectives, like increasing the speed of innovation, improving group problem solving, and reducing employee turnover. Having fun together can provide opportunities for seeing things in a new light. Inside your company these activities can create the glue that the business needs to tackle the next challenge.

Calendar of Deadlines and Important Dates

Dec. 1-4	Leading in an Ownership Setting
Feb. 6-7	ESOP Professionals' Forum
May 20-22	National Conference

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

Freedom and Ownership are the Pillars to Success

One Person's View on How it Feels it Be an Employee Owner

Leila Castañeda, Strategic Initiatives Manager, Rincon Technology, Inc.

Editor's Note: As part of this year's Employee Ownership Month celebration, we asked our members to share, in their own words, what being an employee owner means to them.

When I first interviewed for the position at Rincon Technology, I was asked to describe the life I always wanted to live; it was a question I had never been asked before by a potential employer. My shoulders and expression relaxed; lost in thought, contemplating the request, I responded: "freedom."

I had worked for a large corporation in a highly regulated industry for the better part of my professional career, operating like a cog in a machine with little time to focus on my happiness. My future boss explained that Rincon's original vision was to enable its employees to live out their dreams of a life imagined, to be successful, to be bold—and this vision has made all the difference to me. A year and a half later, I work remotely from home, six months shy of being vested in Rincon's ESOP and becoming a tenured employee owner.

Monday's have never been the same.

Working from home is a unique and privileged experience, and it benefits the bottom line in the efficiency and culture of our company. The time it used to take me to commute is now invested back into myself and Rincon. The thing I hated the most about a "9 to 5" experience was the mornings; snoozing the alarm only to wake up and run right out the door.

Sipping my coffee, watching the sun rise has replaced rushing to the office. Journaling and savoring a few mindful minutes have become a part of my morning routine. The fact is, I have been provided the luxury of creating my own

schedule—something usually reserved only for a small percentage of the workforce, for the capital intensive, blood-sweat-and-grit of the entrepreneurial suite. I have been gifted the life of a business owner, without the arduous exertion, like being tapped on the forehead by a fairy godmother and sprinkled with pixie dust.

I've accumulated such an appreciation for being an employee owner that it has influenced the way that I approach work. I notice myself putting in longer hours, creating without limitations, and asking what more I could to do to contribute to the success of the company. I apply financially sound strategies. I sit at the table without hesitation. I have a long-term vision for my future at Rincon as a direct result of our company's value in employee ownership and freedom.

> ***I feel a part of something larger than myself, and that my contributions matter. Being valued is more than just a feeling—it's a sense of purpose.***

Rincon empowers individuals to live the employee ownership mentality and to connect to the business and to fellow employees as one team. In my role I wear many hats, and on any given day I own developing different aspects of the business. From evolving our sustainability objectives to championing our diversity designation to supporting our sales endeavors, I emphatically collaborate across all departments.

Designed this way, every member of our organization is accessible, from the top down. I have the pleasure of working with each of our organization's sales representatives as easily as the CEO; it is one of the most rewarding experiences Rincon offers. Collaboration, a buzzword in today's professional institutions, is the heartbeat to our achievements. Every day we are charged to think like business owners. We are encouraged to be bold, bring meaningful and innovative ideas to align better with our company's mission and values. Together, we are the genetic makeup of this company, a quality that is recognized by our customers and partners.

The financial aspect of being an employee owner at Rincon is just a fringe benefit; the real reward is the enriched business model. I know far too many people who live to work instead of work to live. Rincon's original dream was to propel us to live ours, now it's our turn to return the favor. Only time will tell how this company mentality will shape the next generation of Rincon leaders and employee owners and, as if by example, may even encourage other companies to follow the same blueprint towards business success and autonomy.

Being a part of such a unique business model coupled with the ownership mindset has transformed the way I view working. I feel a part of something larger than myself, and that my contributions matter. Being valued is more than just a feeling—it's a sense of purpose. If my essay is anything, I hope it serves as an example of what companies can achieve when they move away from focusing on just dollars and cents and, instead, move towards showing true appreciation for the people who work to help achieve those goals.

Employee ownership means valuing people, putting them first, and creating an environment where they are free to live the life they've always dreamed of living.

Advisory Committee on Administration

Allocating Plan Expenses to Participants' Accounts

By Kevin Rettler, Principal Financial Group
Reviewed by Renee Stadtmueller, Blue Ridge ESOP Associates

If you choose to pay plan expenses from the ESOP trust, how do those expenses get allocated to participants' accounts? That excellent question is the focus of this month's article, which discusses how plan expenses that are paid with ESOP trust assets get allocated to participant accounts.

How Are Expenses Allocated?

The plan document should indicate how expenses are to be allocated to participant accounts. Depending on the type of expense, the expenses may be allocated in one of three ways:

- Pro-rata, relative to account balances.
- Per capita (equal amount to each participant).
- Directly to specific participants. These expenses may be due to a distribution election made by the participant or because of a domestic relations order.

How Are Expenses Allocated Pro-rata?

It is most common that expenses are offset with the investment gain/loss of the assets. However, the plan document may have separate language specifying how to allocate expenses, so it will be important to refer to that document.

Expenses either are allocated to participants based on their other investment account balance or on the total account balance, including the value of the shares in the account. Typically, this provision will specify that the expenses are allocated based on beginning account (total or other investment account only) less distributions and forfeitures.

Other Items to Consider

You also need to take into account the following when allocating expenses.

- There must be cash in the plan to allocate expenses to participant accounts.
- If you are allocating expenses pro-rata on the other investment account balance and you are segregating participants out of stock into cash as part of the allocation process, there could be unintended consequences. If all—or most of—the cash in the plan is in the accounts of former participants, they will be incurring the bulk of the expenses even though all the expenses are not directly related to the cash account. This would have a large negative impact on balances of the former participants. If you are segregating former participants and pay plan expenses from the trust, you may want your plan document amended to allocate the expenses on the total account balance, so all participants pay a fair portion of the plan expenses.
- If you are allocating pro-rata on total balance, you could run into the scenario where participants have a negative ending cash balance because they do not have enough cash in their accounts to pay their portion of the plan expenses. The participants may need to sell shares for cash to offset the negative balance. These shares would then be repurchased by other participants.
- If using the per capita method, be sure it is a reasonable method for the type of expenses the plan is paying. For example, fees charged for recordkeeping, valuation, or legal may be reasonable to allocate on a per capita basis, but investment fees related to the other investment accounts may not be reasonable to allocate in this manner.
- If expenses are allocated directly to participants (ex. distribution election or domestic relation order) you should confirm their vested balances are updated properly to account for the plan expense. The full expense would be deducted from their vested balance, versus charging the expense to their total account balance, causing only a portion of the expense to reduce their vested balance.
- If you are terminating the plan and paying expenses out of the trust you will need to make sure the expenses are allocated equitably among the participants. You do not want to have a situation where the participants who have not taken a distribution are absorbing all the expenses because expenses continue to accrue, and they are the only ones left with account balances to pay the expenses.

Conclusion

Allocating plan expenses to participant accounts is permissible, but you will need to determine if plan participants are being treated fairly. If you have any questions regarding how expenses should be allocated, you will want to consult with your legal counsel and your third-party administrator.

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

Valuation Viewpoint

A Practical Guide to Company Forecasting

By Seth Webber, Principal, ASA, CFA, CEPA, Berry Dunn

Business valuations are only as good as their inputs. One of these inputs is the forecast relied on in the income approach. However, the value of forecasting extends beyond just ESOP valuation purposes. Forecasting is a crucial planning tool for any successful business. In addition to helping management make better decisions, forecasting assists management teams in other ways—such as highlighting company risk factors and identifying operational bottlenecks.

There are numerous techniques used to prepare a financial forecast. Below are two common forecasting methodologies, as well as some practical advice for creating and testing a forecast and a few of the benefits of forecasting.

Top-Down Forecasting

Top-down forecasting begins with a company assessing the market as a whole. This analysis forecasts revenue

based on historical trends, underlying company-specific or industry-wide value drivers, and/or operating conditions in the industry or economy. Other relevant factors to consider when beginning a top-down forecast include market share, competition, and customer demand.

For example, a construction company forecasts revenue to increase 10 percent from $10 million to $11 million, based on the historical revenue trend and the company's operating environment.

Using top-down forecasting may be more efficient than bottom-up forecasting to generate forecasts in a timely manner while also providing management with a greater understanding of revenue patterns and a wider scope of growth opportunities. Because top-down forecasts assume a company's cost structure will reflect historical results, they can be prepared without access to the granular data necessary to create a bottom-up forecast.

Bottom-Up Forecasting

> ***Top-down forecasts can suffer from a lack of company-specific detail. Bottom-up forecasts are sometimes criticized as a "numbers exercise that misses the forest for the trees." When taken together, these two forecasting strategies provide a balanced view of the future of a company.***

Bottom-up forecasting starts with the individual business and expands out. Also known as an operating expense plan, this method analyzes unit sale forecasts, department-specific expenses, staffing and equipment capabilities, and capacity considerations as the basis for the forecast.

For example, a construction company analyzes every project in its backlog—as well as submitted bids for its residential segment and commercial segment—to arrive at a revenue forecast of $11 million.

Bottom-up forecasting may increase management and employee involvement in the planning process and provide more accurate results. Additionally, because of the detail and underlying company-specific data, a bottom-up forecast may be a more versatile tool to model changes in the company's operating environment.

Practical Considerations

To get the best of both worlds, consider using both top-down and bottom-up forecasts in tandem. Top-down forecasts can suffer from a lack of company-specific detail. Bottom-up forecasts are sometimes criticized as a "numbers exercise that misses the forest for the trees." When taken together, these two forecasting strategies provide a balanced view of the future of a company.

Once prepared, forecasts should be tested for reasonableness. Areas for consideration include:

- Economic conditions.
- Industry-wide trends.
- Working capital requirements.
- Plant capacity.
- Age and condition of equipment.
- Implied market share.
- Labor requirements.
- Staffing utilization rates.
- Regulatory constraints (e.g., permitting).
- Sustainability of forecasted growth rates.

Forecasts also should be analyzed within the context of historical results and prior forecasts.

Historical results can provide a trajectory for anticipated future results. Forecasts from prior years can be compared to historical results to gauge the company's ability to meet the current forecast.

Another practical consideration is the response of competitors to the company's anticipated actions. No company operates in a vacuum (although SpaceX is working hard to achieve this goal). Other companies will respond to the subject company's actions, particularly as their market share is eroded.

A sensitivity analysis can be a useful tool to test the impact of different variables on the forecast. By creating a set of variables and outcomes in a sensitivity analysis, one can determine how a change in one input variable (e.g., the price per unit of product) can impact the forecasted financial results. This process highlights how variables affect profitability.

Many people are reluctant to prepare forecasts because of the difficulty of predicting future financial results. However, an important concept to keep in mind when preparing forecasts is the difference between accuracy and precision. Accuracy is how close one is to the correct result; precision relates to how refined an estimate is, often as represented by the number of digits provided.

It is not necessary for each line item in a forecast to be precise, although accuracy is a priority. Spending considerable time forecasting advertising expense of *exactly* $1,522,550 would be an example of precision. A more effective forecasting strategy—an accurate forecasting strategy—would be to consider whether advertising expense of $1,500,000 would be reasonable based on all relevant factors.

Benefits of Forecasting

A well-supported forecast not only provides an accurate conclusion in ESOP valuations but is also advantageous to companies in several other ways.

Forecasts equip managers with data and a plan to make informed decisions. Every time managers purchase equipment or hire new personnel, they are making a prediction about future business operations. Specifically, they are predicting that business operations will continue in

the future, justifying and necessitating their investment or new hire.

Forecasts are simply refined documentation of these predictions of future results. Forecasts compile multiple variables into results, containing more calculations than most people can keep top of mind when making a decision.

Rather than making business decisions based on limited mental calculations or on their "gut feel," managers can use these forecasts to make better informed decisions. While there is still a place for intuition in business decisions, it should be coupled with data from well-prepared forecasts.

Another benefit of forecasting is the identification of bottlenecks. Bottlenecks are often identified when preparing a bottom-up forecast or when testing the reasonability of forecasted financial results. By identifying bottlenecks early on, one can plan ahead to eliminate bottlenecks and expand operations.

Forecasts (particularly bottom-up forecasts) highlight company risk factors. Forecast preparation often illuminates factors such as customer concentration, a lack of product diversity, and other risk factors underlying forecasted financial results. Additionally, testing the forecast through sensitivity analyses often identifies other risk factors. After establishing potential hazards, one can then take steps to minimize them.

Conclusion

To correctly estimate value, it is necessary for forecasts prepared for ESOP-related valuation purposes to be realistic and accurate. Bottom-up and top-down forecasting are two methods to develop a forecast. When utilized together and rigorously tested for reasonability and sensitivity to underlying assumptions, credible forecast results may be attained. In addition to maintaining the integrity of valuation reports, forecasts are useful for making informed decisions, finding bottlenecks, and identifying risk factors.

This article was reviewed and approved by the Chair of the Valuation Advisory Committee, Chuck Coyne, Managing Director, Empire Valuation Consultants LLC.

Legal Update

Court Finds ESOP Participant Benefited from ESOP Transaction

By Lars C. Golumbic, Principal and Meredith F. Kimelblatt, Associate, Groom Law Group Chartered
Edited by Julie Govreau, Senior Vice President and Chief Legal Counsel, Greatbanc Trust Company, Lisle, IL

In *Lee v. Argent Trust Co.*, No. 5:19-CV-156 (E.D.N.C. 2019), a former employee claimed that the company's ESOP fiduciaries caused it to overpay for a majority of the company's shares. In determining whether the former employee had standing to bring her claims, the court considered the economics of taking on debt in leveraged ESOP transactions and its effect on the post-transaction value of shares.

The Transaction

Based on the allegations in the underlying complaint, Choate Construction Company created the Choate Construction Company ESOP in December 2016. The ESOP hired Argent Trust Company to serve as the ESOP's trustee.

That same month, Choate prepared to transfer an 80 percent ownership stake to the ESOP. Argent retained a financial advisory firm to conduct an independent valuation for the transaction and subsequent annual valuations.

On December 6, 2016, the ESOP purchased 8 million shares of Choate's voting common stock for $198 million. Because it did not have access to $198 million in cash at the time of the transaction, the ESOP took on $198 million in debt to finance the purchase price. Choate first borrowed $57 million from a bank and lent that amount to the ESOP, which then issued $141 million in notes to the selling shareholders.

Just over three weeks later, the ESOP's December 31, 2016 valuation valued the 8 million shares at $64.8 million.

The Complaint

The plaintiff, Sharon Lee, is a former Choate employee who was fully vested in the ESOP at the time her employment ended in 2017. In Lee's view, because the $64.8 million valuation lowered the per share value to $8.10 just weeks after the $198 million transaction, the transaction could not have been for fair market value. Thus, Lee alleged that the ESOP had overpaid for the 8 million shares.

On April 17, 2019, Lee filed a class action complaint against Argent, Choate's Board of Directors and ESOP committee, and the selling shareholders. The complaint set out seven causes of action under ERISA, including: Argent breached its fiduciary duty to the ESOP; the board, committee, and selling shareholder defendants engaged in prohibited transactions in violation of ERISA; and the board defendants failed to monitor Argent.

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THE CONFERENCE & TRADE SHOW for ESOPs


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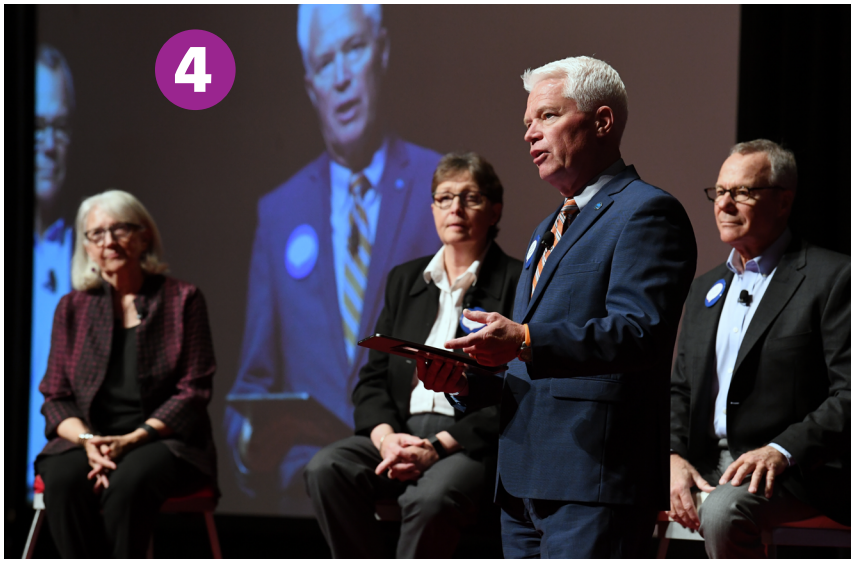
Employee Owned Hits New Highs

The premiere event for employee owned businesses raised the bar this November, with world-class keynoters like Sekou Andrews 1, a Pre-Conference Workshop for those considering an ESOP 2, exclusive content at the Innovation Stage in the Trade Show 3 4, and, of course, the best networking and educational content anywhere.

For more photos from the conference, visit us online at www.flickr.com/photos/ and on Twitter at #EO2019.



The defendants moved to dismiss Lee's claims under Rule 12(b)(1) and 12(b)(6), arguing that she lacked Article III standing to sue and had failed to plausibly allege any claims under ERISA.

The Decision

The court explained that Lee's allegations were premised on her belief that the ESOP's purchase of 8 million shares was excessive in light of the end-of-year annual valuation. However, the court rejected Lee's view that the shares had decreased in value, noting that Lee "fundamentally misunderst[ood] the nature of the December 2016 transaction."

Instead, the court analogized by comparing the transaction to the purchase of a mortgage-financed house. In that scenario, the court reasoned, a buyer with insufficient funds for a down payment on a house worth $198,000 would obtain a mortgage loan to purchase the house. In doing so, the hypothetical buyer has taken on $198,000 in debt (the mortgage), but also has obtained a $198,000 asset (the house).

At the time of the purchase, the buyer has experienced a $0 change in equity value of the home. If the buyer purchased the house at a discount, however (e.g., paying $198,000 for a house worth $262,800) then the buyer's equity would increase by the amount of the difference between the house's actual worth and the purchase price ($262,800 - $198,000 = $64,800).

The court analogized this home buyer scenario to the ESOP's purchase of 8 million shares on December 6. Like the hypothetical buyer, the Choate ESOP took on $198 million in debt so that it could purchase the shares at the agreed-upon purchase price. At the time of the transaction and shortly thereafter, the expected value of the shares would have been $0.

Instead, the December 31 valuation for $64.8 million reflected that the Choate shares had appreciated in value by approximately 33 percent in less than a month, causing the ESOP to realize $64.8 million in increased equity. Further, this equity has continued to grow: As of December 31, 2017, the ESOP was valued at $107.2 million.

As a result, the court found that the ESOP actually had purchased the 8 million Choate shares at a discount, and that the ESOP and its participants—including Lee—had received an immediate equitable benefit at the time of the transaction.

"Put simply," the court reasoned, "Choate's 2016 transaction did not injure her; it benefited her." The court also noted that Lee's "mere allegation" of overpayment was insufficient to establish that she had been injured.

> ***The court correctly rejected the notion that taking on debt to finance an ESOP transaction necessarily reduces the equity value of the purchased shares.***

Accordingly, the court held that Lee had not demonstrated that she had suffered any "concrete and particularized injury" as required for Article III standing and dismissed the complaint for lack of subject matter jurisdiction. Because the court determined that it lacked subject matter jurisdiction, it did not consider whether Lee had stated any plausible claim under Rule 12(b)(6). Lee filed a motion for reconsideration, which is currently pending.

Takeaways

The court correctly rejected the notion that taking on debt to finance an ESOP transaction necessarily reduces the equity value of the purchased shares.

The decision provides a useful economic framework for interpreting post-transaction valuations in a leveraged transaction context. Plan fiduciaries and independent appraisers should use this framework to push back against allegations of overpayment that rely solely on lower post-transaction valuations.

President's Corner

Pardon Our Dust As We Build a Path Toward the Future

You've seen me write in this column about the many investments we are making at The ESOP Association regarding our technological infrastructure. Well, get ready because we are about to hit a very significant milestone on our upgrade path.

In December, we will migrate our membership database to a new platform. Along the way there will be lots of sweat, long hours, and perhaps even a few choice words that can't be printed here. But the end result will be something we hope will make life easier for our members, and will lead to a far more enjoyable and intuitive member experience.

Without going into painful details (or wading into the technological deep end of the pool where most of us don't belong), the system we are moving away from has become a huge burden on you and on our staff. Once considered a top shelf piece of software, this system has gradually required TEA's staff to find multiple work arounds, and to work long and hard to overcome systemic weaknesses and flaws.

Software is supposed to be a force multiplier, something that makes it possible to work faster, more accurately, and more efficiently. Our current system is not doing that and in fact is probably now best described as a force divider. (You can argue that such a term does not exist, but if it did it would certainly apply here.)

I want to commend The Association's staff on their dedication and diligence the past few years. If you were able to register for conferences and update your membership records smoothly and easily, it sometimes was due to their personal efforts to overcome a system that too often proved balky and cumbersome.

Converting to a new system is never easy. In the short term there will be bumps during the transition, but should provide much better long term results—for all of us.

Rest assured that we are doing all we can to prepare for and manage this transition so that it goes as smoothly as possible.

Part of the reason we chose this time of year to transition systems is that it traditionally is one of the quietest periods on our calendar. The Employee Owned conference in Las Vegas has just ended, registration for the National Conference will open soon but is not yet online, the competitions for the Annual Award for Communication Excellence and the Employee Ownership Month Poster are not yet in full swing, and our chapters typically put on fewer events.

We are taking advantage of this relative lull by investing heavily in staff training on the new system. Our Membership team, especially Membership Director Jennifer Edwards, has been logging long hours to clear the road and ensure the smoothest transition possible.

We expect to have our system up and running soon. Once it is in place, we likely will experience a few growing pains. No matter how well one anticipates organizational needs, with a project of this scale, unexpected bumps will appear in the road.

If those occur (and we know they will) I ask for your patience. We are all traveling together to a new place. We may yet hit a pothole or two, but it will be worth the trip.

Employee Ownership Month 2019

TEA Members Prove Why Employee Ownership Matters

Each year we see hundreds of companies—and thousands of employee owners, professionals, and politicians—get involved with Employee Ownership Month. This year was no exception.

From philanthropic activities, employee retreats and company meetings, to proclamations and bill sponsorship, this month was full of incredible events highlighting why employee ownership makes us special.

Ownership Engagement

An easy way to measure the success of Employee Ownership Month is to see how many employee owners and ESOP companies engage us on social media and on our website. This year, like years past, we used the hashtag #EOMESOP on social media.

This year we once again saw record engagement on social media and increased views on our blog and on our website. In fact, compared to November of last year, we had 2.8X higher reach on Facebook which means our followers were engaging and sharing our content more than ever.

Giving Back to the Community

An important part of employee ownership month is philanthropy. It's a great way for teams to build camaraderie while helping to improve the community. This year, a group named the Employee Owners of Vermont showed us just how it's done.

During their Second Annual Food Drive, the Employee Owners of Vermont surpassed their goal of $20,000 for the Vermont Foodbank and raised more than $32,000. This is nearly double what they raised the year before. We are happy to have members like Carris Reels, King Arthur Flour, Gardener's Supply, and Hallam ICS, who actively worked to help their community in Vermont and spread the word about employee ownership.

Political Support

Two important bills currently in Congress received vital support this Employee Ownership Month. Senate Bill 177 received three new co-sponsors, which brings its total to 35. HR 2258 added a whopping 11 co-sponsors, bringing its total to 41.

This show of public support for ESOPs is proof that our efforts at the National Conference in Washington, DC and during Employee Ownership Month are being noticed.

As we look to the end of the year, don't forget to share your employee ownership activities with us on social media.

Thank you to all who participated in this year's celebration. We can't wait for next October!

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