

## EMPLOYEE STOCK OWNERSHIP PLANS



Husch Blackwell helps clients determine whether an employee stock ownership plan (ESOP) is the best transition solution for their circumstances. Our ESOP lawyers have quarterbacked ESOP transactions across multiple industries, including food systems, banking, real estate and construction, manufacturing, professional services, and gaming, among others.

We counsel ESOP-owned companies in their own M&A activity, including acquisitions of target companies by the ESOP and the sale of ESOP-owned companies. In the day-to-day administration of an ESOP, we have extensive experience guiding ESOP clients through a myriad of tax and ERISA compliance issues through a pragmatic business focused approach. This includes counseling clients through IRS examinations and DOL enforcement activity, as well as representing clients in ESOP litigation.

Our ESOP law group includes certified public accountants, Fellows of the American Law Institute and the American College of Tax Counsel, and 10 attorneys named to U.S. News' Best Lawyers in America 2023 list. As part of our full-service law firm, clients also have access to more than 1,000 attorneys who are highly knowledgeable in a wide variety of industries and areas of the law, including tax, corporate planning, finance, litigation, real estate, estate planning, labor and employment, and related areas.

## Representative Experience

### Contact Information

Jordan W. Bergkamp  
816.983.8269  
jordan.bergkamp@  
huschblackwell.com

Alan H. Kandel  
314.345.6463  
alan.kandel@  
huschblackwell.com

Mark D. Welker  
816.983.8148  
mark.welker@  
huschblackwell.com

Designed and implemented Employee Stock Ownership Plans (ESOPs) for a food manufacturer, a manufacturer of agricultural equipment, grocery retailers, restaurant companies, and agribusiness lenders.

Successfully defended client in a class action lawsuit that alleged Employee Retirement Income Security Act (ERISA) fiduciaries breached their duties and engaged in prohibited transactions by selling their shares in an ESOP for more than adequate consideration.

Assisted in engineering an ESOP for a large architectural firm, while adding a stock appreciation rights plan to provide additional incentives to the employees.

Assisted in the \$170 million ESOP acquisition of the East St. Louis, Illinois, Casino Queen, a first in the gaming industry.

Assisted 100 percent ESOP-owned S corporation with selling its real estate to a REIT. The sale substantially reduced the client's debt and rent expenses and helped avert potential default on its loans.

Acted as project manager and consultant in connection with first-, second- and third-stage ESOP transactions for clients, including bank holding companies.

Advised large regional retailer in an ESOP buyout, a 1042 tax-deferred transaction. This was viewed as a partial alternative to a buyout by an investment banker in order to secure the tax advantages.

Provided guidance on election of S status to companies partially or wholly owned by ESOPs, including bank holding

companies.

Structured leveraged ESOPs for public companies to gain maximum advantage of the IRC 404(k) dividend deduction and used suspense share appreciation to offset the company's 401(k) match.

Established a new 100 percent ESOP-owned S corporation that acquired the assets of an operating division of a public company using rollovers from a 401(k) plan.

Successfully represented employers in connection with IRS and Department of Labor audits of ESOPs, including allegations related to valuation of employer stock.

Advised clients on establishing and maintaining ESOPs partially funded by elective employee investments.

Established and maintained ESOPs for public companies.

Represented large institutional trustees of ESOPs.

Represented a cooperative grocery wholesaler in selling a retail subsidiary to an ESOP created for the subsidiary and negotiating a long-term supply contract between our client and the sub. The sub became an S corporation, so the ESOP structure enabled it to avoid paying any income taxes.

Organized a coalition and represented technical service providers, including Nelnet Inc., TD Ameritrade, U.S. Assets, Home Instead, Nannonation, Hudl, and Nebraska Global to achieve passage of a corporate apportionment formula and sourcing rules for sales of intangibles and services.

Assisted the Texas Assisted Living Association with almost

every major policy initiative affecting assisted living providers in Texas including securing tort reform for assisted living providers in Texas, securing private accreditation of assisted living communities in Texas, negotiating the scope of practice of skilled nursing in assisted living communities, and began reforms to informal dispute resolution program for assisted living communities. This work routinely involves interaction with the Texas Legislature and lead officials of Texas' healthcare agencies.