

ESOP LEGAL NEWS



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IN THE COURTS

District Court Gives Preliminary Approval to Settlement in King & Prince Seafood Corporation Stock-Drop Litigation

On April 4th, the United States District Court for the Southern District of Georgia gave preliminary [approval](#) to a [settlement](#) in a class action brought by participants in the King & Prince Seafood Corporation Employee Stock Ownership Plan. The participants alleged they were deprived of benefits on account of changes made to the plan's distribution policies.

Bear Stearns Agrees to Stock-Drop Litigation Settlement

On March 20th, Bear Stearns Cos. [agreed](#) to a \$10 million settlement to resolve claims that it breached fiduciary duties under ERISA by offering its common stock as an investment option when it was no longer a prudent investment. The \$10 million settlement fund is being offered in exchange for the release of all claims. The litigation is currently pending in the United States District Court for the Southern District of New York and is a stock drop lawsuit rising from the wake of the subprime mortgage crisis. Participants in The Bear Stearns Companies Inc. Employee Stock Ownership Plan filed a consolidated class action against the company and other defendants alleging the ESOP fiduciaries failed to prudently and loyally manage the plan and its assets, failed to avoid conflicts of interest, and failed to adequately monitor other fiduciaries. The participants contended that the fiduciaries knew the investment in company common stock was imprudent and breached fiduciary duties by failing to reduce and ultimately liquidate the plan's holdings.

Participants in First Federal Bank of California ESOP Move Court for Final Approval of Settlement

On March 12th, participants in the First Federal Bank of California Employee

Stock Ownership Plan [moved](#) the United States District Court for the Central District of California for final approval of an \$800,000 [settlement](#) agreement that would end a class action brought against former officers and directors alleging breaches of fiduciary duties under ERISA. Participants alleged the defendants breached their fiduciary duties of prudence, care, and loyalty through their management, oversight, and administration of the plan's significant investment in employer securities during the class period. Specifically, the participants alleged the bank had a substantial portfolio of residential pay option adjustable rate mortgages that were toxic and significantly underperforming and that the bank lowered its mortgage underwriting standards relating to the verification of income and assets.

AGENCY NEWS

Financial Services Groups Request Status Report from DOL on Re-Proposal of Regulation Redefining the Term "Fiduciary"

On March 13th, the Financial Services Institute and the Financial Services Roundtable [requested](#) a progress report from the Department of Labor regarding its efforts to re-propose the regulation that would broaden the scope of the term "fiduciary" under ERISA. In addition, the groups asked the DOL how it is following the criteria outlined in letters sent by both [Republican](#) and [Democratic](#) leaders late last year.

ON CAPITOL HILL

The ESOP Association Submits Comments on Corporate Tax Reform to House Committee

On March 7th, the ESOP Association submitted its [comments](#) to the House Ways and Means Committee on Tax Reform. The Committee held a hearing addressing the treatment of closely-held businesses in the context of tax reform. In its comments, the Association sought to clarify myths surrounding ESOPs, including that laws favoring ESOPs were developed exclusively by the Senate, and that S corporations sponsoring ESOPs are tax exempt. The Association stated that the House Ways and Means Committee adopted an amendment making an ESOP a permitted S corporation shareholder. In addition, the Association stated that the law permits only tax deferral in the context of S corporation ESOPs because participants pay taxes on distributions when they retire, leave the company with a vested account balance, become disabled, or die. The Association also urged Congress to consider job sustainability when reforming Federal tax law.

ESOP Champion, Senator Olympia Snowe, Will Not Run for Re-Election

On February 28, Senator Olympia Snowe (R-ME) announced she would not seek a fourth term in 2012. Senator Snowe, along with Senators Benjamin Cardin (D-MD) and Pat Roberts (R-KS), introduced S. 1512, the "[Promotion and Expansion of Private Employee Ownership Act of 2011](#)". In addition, Senator Snowe [pledged](#) to protect against tax reforms aimed at eliminating certain tax benefits provided to ESOPs.

Pro-ESOP Legislation Garner Support

Since March 16th, H.R. 1244, The "[Promotion and Expansion of Employee Ownership Act](#)," has gained four Republican cosponsors to arrive at 67 total cosponsors. Representatives Steve King (R-IA), Billy Long (R-MO), Steven "Steve" Chabot (R-OH), and Randy Forbes (R-VA) have cosponsored the bill. The bill is currently pending before several House Committees and one House Subcommittee. The bill: amends Code Section 1042 to allow an S Corporation shareholder to defer recognition of capital gain realized from the sale of employer securities to an ESOP; adds a new section to the Code permitting banks to deduct 50% of the interest received from a qualified securities acquisition loan; adds a new section to the Code requiring the Secretary of the Treasury to establish the "S Corporation Employee Ownership Assistance Office" to foster employee ownership of S Corporations; and amends the Small Business Act to permit a corporation eligible to participate in loan, contracting assistance, or business development programs to remain eligible to participate after an ESOP acquires 50% or more of the corporation.

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