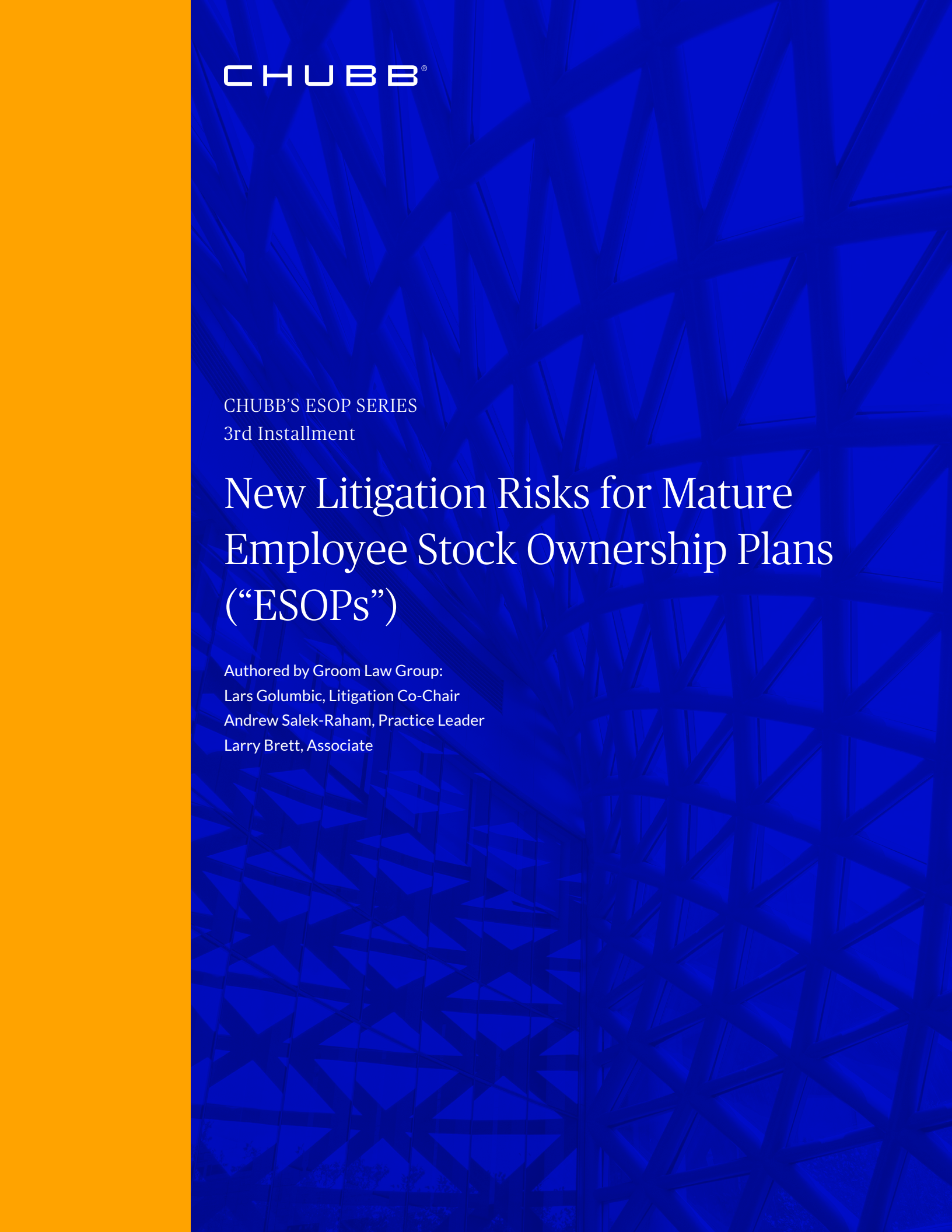


The image features a solid orange vertical bar on the left side. The rest of the background is a deep blue with a complex, abstract pattern of white lines that intersect to form a series of triangles and polygons, resembling a stylized architectural or molecular structure.

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CHUBB'S ESOP SERIES
3rd Installment

New Litigation Risks for Mature Employee Stock Ownership Plans ("ESOPs")

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Generally speaking, a “mature” ESOP is one that has allocated all shares to participants, has no outstanding balance on its internal loan, and holds no shares in suspense for future allocation.¹ Sponsors and fiduciaries of mature ESOPs face a difficult challenge: monitoring, managing, and meeting the sponsor’s repurchase obligation in a way that keeps the sponsor financially healthy, does not stifle share value growth, and gives participants confidence that they will be able to monetize their shares at separation.²

Mature ESOPs are generally considered low litigation risk because the ESOP plaintiffs’ bar and the U.S. Department of Labor have historically focused their litigation on large stock purchase and sale transactions associated with newer ESOPs. But as mature ESOPs have grown in both number and asset size, plaintiffs’ firms are increasingly eyeing them as a potential new target. Recently filed lawsuits have advanced novel theories challenging how sponsors and fiduciaries of mature ESOPs have elected to manage their repurchase obligations.

This trend has produced two new types of ESOP litigation risks for mature ESOP sponsors and fiduciaries: challenges to “releveraging” transactions, and challenges to the investment of ESOP non-company stock (i.e. Other Investment Account, or “OIA”) assets.



Releveraging Transactions and the *Shipp* Litigation

Mature ESOPs face many challenges related to the repurchase obligation. For example, a sponsor who is projected to perform well in the near future may be concerned that it will be unable to meet its rapidly growing repurchase obligation. A sponsor who has a history of redeeming and retiring shares from separated employees may need to replenish an ever-shrinking stock pool available for allocation to future participants. And, depending on how a successful sponsor has repurchased shares, per-share value may grow faster than the sponsor's overall equity value. Releveraging has become a popular way to address these challenges in recent years, as the number of mature ESOPs has grown.

In a typical releveraging, the sponsor company redeems shares from former ESOP participants and, rather than retiring them, sells them back to the ESOP. The ESOP finances this purchase through a loan from the company and places the repurchased shares in a suspense account for allocation to participants as the loan is repaid. Doing so allows a sponsor to:

- reduce an otherwise unmanageable repurchase obligation and ensure the sponsor's continued viability;
- replenish the ESOP with new shares of company stock for future employee-participants;
- realign the rate of per-share growth with the rate of overall equity value growth; and
- preserve employee-ownership percentages in ESOPs that are partial owners of companies with outside or synthetic equity holders.

Despite these benefits, plaintiffs have begun filing lawsuits targeting releveraging transactions. A recent example is *Shipp v. Central States Manufacturing, Inc.*³

Years of meeting the repurchase obligation by redeeming and retiring shares had reduced Central States' pool of outstanding stock. During the same period, the company's strong performance caused its equity value to grow. The combination of these factors caused the per share price of the company's stock to grow at a faster rate than the company's organic equity growth, which in turn led the ESOP's largest account balances to grow rapidly. After an employee with a large account balance declared in 2018 that he would retire, the company realized it had a problem: a concentration of rapidly appreciating stock in a small number of accounts held by employees nearing retirement was causing its repurchase obligation to balloon — so much so that it would consume nearly all of the company's cash flows within five years. The growing liability would, at best, prevent the company from growing its business (and share value) in a healthy, sustainable manner or, at worst, threaten its ability to remain a going concern.

After exploring many different options for addressing this emergency, Central States decided to releverage. In August 2020, the company redeemed approximately 2.2 million shares held by retired, retiring, or separating employees for \$40 million (or \$18 per share). In December 2020, the company sold those shares back to the ESOP in a \$40 million releveraging transaction (again at \$18 per share) financed by a 30-year note. As with a typical leveraged stock purchase transaction, the ESOP's new shares were placed in a suspense account for allocation to participants as the ESOP (using sponsor contributions) paid down the note over time.

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The *Shipp* plaintiffs sued Central States, its board, its individual directors and officers, and the ESOP's trustee in November 2023 for breach of fiduciary duty and prohibited transactions under ERISA. Their core theory was that reintroducing the shares into the suspense account diluted the per-share value of the company's stock. In other words, the transaction created more pieces of the same pie, which reduced per share values and account balances, particularly accounts with the largest balances held by long-tenured participants closest to retirement. Plaintiffs alleged that participant accounts were diluted by approximately 19% (2.2 million new shares divided by 11.8 million total shares outstanding at year-end 2020) and claimed damages totaling \$40 million.

The court granted summary judgment in favor of the *Shipp* defendants in March 2026.⁴ The court began by addressing whether the leveraging transaction had caused any financial loss to the ESOP. If not, then plaintiffs would lack standing to sue, mooting the need to evaluate the merits of their ERISA claims. Though the court was skeptical of plaintiffs' "dilution theory" of injury — after all, the value of the ESOP's holdings as a whole was not reduced, and participants who were further from retirement would benefit in the long run from share allocations over time — for the purposes of its opinion, the court elected to assume without ruling that plaintiffs suffered an injury and turned to the merits.

First, with respect to the company-side defendants, the court held that repurchase obligation strategy is a corporate business decision, not a fiduciary decision governed by ERISA, and not one that is within the trustee's purview. Even assuming the leveraging transaction reduced the value of the company's stock, an ESOP sponsor's corporate decisions don't turn into fiduciary acts merely because they impact stock value — and, in turn, ESOP holdings — the court held. As such, no fiduciary duties or attendant liabilities flowed from that strategic corporate/sponsor decision. Plaintiffs' theory that leveraging transactions necessarily run afoul of ERISA and their claims against the company, its board, and its individual directors and officers were dead on arrival.

Second, with respect to the trustee's approval of and willingness to engage in the leveraging transaction, the court applied — and held that the trustee satisfied — ERISA's duties of both loyalty and prudence. The duty of loyalty, the court stressed, runs to the plan as a whole — not to particular participant groups whose interests diverge at a given moment, as plaintiffs argued. By approving the leveraging transaction, the trustee ensured shares would remain available for future participants and that the company could meet its repurchase obligations without disrupting sustainable equity value growth. In doing so, it acted impartially and met its duty of loyalty to the plan as a whole.

As to the trustee's prudence, the court highlighted the thorough decision-making process that Central States and the trustee undertook: the company engaged multiple financial advisors to help it model leveraging scenarios and alternatives to leveraging; the company convened its advisors along with the ESOP's trustee and its financial advisor to help decide on a proper course of action; and the trustee monitored the company's actions by attending board meetings, communicating with the company's officers, and reviewing analyses that the company's advisors issued, including sustainability and repurchase obligation studies. In the transaction itself, the trustee retained its own independent advisor and negotiated an \$18 share price that was favorable to the ESOP in both the redemption and the repurchase steps of the transaction.

Plaintiffs did not appeal the court's order granting summary judgment for defendants.





The Rise of OIA Litigation

A second emerging litigation area for mature ESOPs concerns the manner in which ESOPs invest OIAs (e.g., non-company stock assets — typically employer contributions).

ESOPs that hold non-employer stock assets typically do so to facilitate share recycling, which is a common mechanism for redistributing shares from former to current participants.⁵ In short, the sponsor contributes cash to the ESOP, which the ESOP pays to departing participants in exchange for their stock. The ESOP then reallocates that stock to current participants.⁶ Some ESOPs require that cash distributions remain in a separated participant's ESOP account for several years before the participant is permitted to transfer them, which is commonly called segregation.⁷

An ESOP can accumulate an OIA balance if the amount of the employer contributions into the plan exceed the ESOP's distribution needs or if there is a large amount of segregated accounts. Most ESOPs hold accumulated OIA assets in liquid, conservative investments, like money market accounts or short-term fixed income assets, before they are paid out to separating participants. These holdings give the ESOP liquidity to fund anticipated distributions, stock purchases, and the repurchase obligation, while hedging against the concentrated risk in the ESOP's company stock and protecting against market losses.

Two plaintiffs' law firms have recently filed lawsuits challenging these conservative investment strategies. The suits generally allege that ESOP fiduciaries violated ERISA's duty of prudence by investing OIA assets too conservatively, sacrificing returns participants could have earned through a more aggressive strategy.

They also allege that investing conservatively is disloyal: because the company is always responsible for satisfying the repurchase obligation, they say, a capital preservation strategy designed to ensure that cash exists within the ESOP protects the company's interests, not ESOP participants' interests. To support their claims, plaintiffs typically identify supposedly comparable ESOPs that they say invest OIA assets more aggressively.

Defendants generally have argued that ERISA requires courts to evaluate ESOP fiduciary decisions in light of the purpose of ESOPs: unlike conventional retirement plans, Congress designed ESOPs to promote employee ownership and to allow employees to accumulate wealth via the growth in value of employer stock. Employer contributions play a role in that process: they allow separating participants to realize their stock gains, current participants to obtain new shares, and the ESOP as a whole to sustain itself for future generations. Defendants also stress that conservative investments are not *per se* imprudent under ERISA, which imposes no duty to maximize returns. In many mature ESOPs, fiduciaries may reasonably prioritize liquidity and low volatility given repurchase obligation considerations.

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With respect to plaintiffs' comparator-plan allegations, defendants argue that meaningful comparisons to other ESOPs require detailed information — participant demographics, anticipated separations, distribution policies, and share-repurchase systems — that plaintiffs do not offer. Defendants also argue courts should evaluate an ESOP's portfolio as a whole rather than isolating the OIA component, which is often a small share of total plan assets. And with respect to plaintiffs' theory that ERISA's diversification requirement⁸ applies to OIA assets, defendants have argued that the exemption ERISA affords ESOP fiduciaries from that requirement applies to OIA assets, not just company stock — an argument that at least one district court has agreed with.

OIA litigation to date has targeted ESOPs with average OIA balances of roughly \$3 million to \$12 million, with plaintiffs claiming damages of about 90% of those balances on average. Procedural outcomes — so far limited to pleading-stage decisions — have been mixed: one court dismissed a prohibited transaction claim but let a breach of fiduciary duty claim proceed.⁹ Another dismissed a fiduciary breach claim outright; that dismissal is now on appeal before the Fourth Circuit.¹⁰ Two other courts allowed both prohibited transaction and fiduciary breach claims to proceed past the pleading stage.¹¹ Another court allowed a fiduciary breach claim to proceed.¹²

Even surviving claims face substantial merits challenges at summary judgment or trial. But surviving into discovery can significantly raise defense costs and litigation exposure. Two OIA cases have settled to date for \$2 million and \$2.1 million — about 30% to 60% of alleged damages — and one settlement also required retaining an independent investment manager for several years postsettlement.



Practical Implications for ESOP Fiduciaries

Mature ESOP sponsors and fiduciaries should evaluate whether their ESOP's repurchase obligation procedures and their treatment of the other investment account carry risk in this new litigation environment.

ESOP sponsors and fiduciaries considering a leveraging transaction should take lessons from *Shipp*. Depending on the facts and circumstances, they should periodically consider obtaining repurchase obligation and/or sustainability studies to forecast their repurchase obligation and monitor the impact it could have on the company's cash flows. They should also consider engaging experienced financial and legal advisors to help determine whether a leveraging transaction is appropriate, and keep the ESOP's trustee and its financial advisor informed of the company's actions.



Mature ESOP sponsors and fiduciaries who carry an OIA balance to facilitate share recycling should review their policies and procedures. Specifically, based on the specific facts and circumstances facing them, sponsors and fiduciaries should consider whether to: (i) pre-fund the ESOP's repurchase obligation or contribute only enough cash to satisfy it annually; (ii) change the way they document the bases for their OIA investment decisions; (iii) consult with investment professionals; and (iv) conduct periodic repurchase obligation and sustainability studies.

Sponsors should also assess whether their insurance adequately covers these novel claims, given potentially substantial damages and litigation costs through summary judgment or trial. Defendants in leveraging and OIA balance class action lawsuits can spend millions of dollars defending a case through trial and appeal — even if they prevail on the merits. And, as discussed above, the few OIA settlements so far have cost defendants millions of dollars each. Sponsors and fiduciaries of mature ESOPs should therefore evaluate whether their coverage is keeping pace with this evolving litigation landscape.

In our next article in the series, we will explore in more detail the litigation risk associated with on-going ESOP administration.

¹For a discussion of ESOP mechanics, see our prior article *Leveraged ESOP Transactions: Basics and Litigation Risks* (available [here](#)).

²For a discussion of ESOP sustainability issues, see our prior article *Understanding Mature Employee Stock Option Plans ("ESOP") and Sustainability Challenges* (available [here](#)).

³No. 5:23-cv-5215 (W.D. Ark. filed Nov. 28, 2023).

⁴See *Shipp v. Cent. States Mfg., Inc.*, No. 5:23-cv-5215, 2026 WL 868217 (W.D. Ark. Mar. 30, 2026).

⁵For more information about share recycling, see our prior article in the series, *Understanding Mature Employee Stock Option Plans ("ESOP") and Sustainability Challenges* (available [here](#)).

⁶Though the sponsor is responsible for paying distributions to departing participants, I.R.C. § 409(h), ERISA's regulations permit an ESOP to do so to facilitate share recycling, see 29 C.F.R. § 2550.408b-3(j) ("[T]he put option . . . may grant the ESOP an option to assume the rights and obligations of the employer at the time that the put option is exercised.").

⁷The IRS has explained that account segregation is a permissible practice, so long as all terminated employees are treated the same. See Internal Revenue Service Memorandum, *Response to Technical Assistance Request #4* (Feb. 23, 2010), https://www.irs.gov/pub/irs-tege/esop_tar4_022310.pdf.

⁸See 29 U.S.C. § 1104(a)(2).

⁹See *Schultz v. Aerotech, Inc.*, No. 24-618, 2025 WL 563585 (W.D. Pa. Feb. 20, 2025).

¹⁰See *Trull v. Bd. of Trs. of McCreary Modern, Inc. Emp. Stock Ownership Plan*, No. 5:25-cv-11, 2025 WL 2803605 (W.D.N.C. Oct. 1, 2025), *appeal docketed*, No. 25-2337 (4th Cir. Nov. 3, 2025).

¹¹See *Dawson-Roberts v. Norman S. Wright Mech. Equip. LLC*, No. 3:26-cv-01171, 2026 WL 1834788 (N.D. Cal. June 25, 2026); *Moran v. ESOP Comm. of the Aluminum Precision Prods., Inc. Emp. Stock Ownership Plan*, No. 8:24-cv-642, 2026 WL 235573 (C.D. Cal. Jan. 28, 2026).

¹²See *Andrews v. Wilson Electric Servs. Corp.*, No. cv-24-00995, 2026 WL 2283444 (D. Ariz. Aug. 7, 2026).



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Andrew frequently represents plan fiduciaries, plan service providers, and plan sponsors in ESOP lawsuits, including disputes over stock purchase and sale transactions, leveraging transactions, and ESOP investments other than employer stock. Andrew has experience in all phases of litigation in federal and state court, including pleadings stage and dispositive motions practice, class certification, discovery, mediation, trial, and appeals.

In addition to his litigation practice, Andrew defends ESOP sponsors, fiduciaries, and service providers involved in U.S. Department of Labor retirement plan investigations. He has testified before the U.S. House of Representatives Subcommittee on Health, Education, Labor and Pensions regarding the need for legislative reforms to ERISA litigation.



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