

Announcer: [00:19](#) Welcome to The ESOP Podcast, brought to you by Capital Trustees, keeping you up to date on all things ESOP.

Bret Keisling: [00:26](#) This week we are going to open up our very first episode with a conversation between me, Bret Keisling, and my partner Rich Heeter. Say "Hi," Rich.

Rich Heeter: [00:26](#) Hi everybody.

Bret Keisling: [00:33](#) We're going to talk a little bit about ESOPs and Capital Trustees and introduce the podcast, Rich, and thought we do it just in a conversation with ourselves, which is a how future podcasts are going to be. We're going to bring in the best top national experts in the community and interviews, conversations on all of the hot topics. So this is going to follow that format.

Rich Heeter: [00:55](#) Some of the best things that we do are conversations amongst ourselves.

Bret Keisling: [00:55](#) And Rich, first of all, let's define ESOP itself. What does ESOP stand for?

Rich Heeter: [01:06](#) So ESOP stands for employee stock ownership plan, which is pretty straightforward.

Bret Keisling: [01:11](#) A lot of it though, we colloquially refer to the ESOPs as "employee owned," and we'll talk about that difference in a little bit, but fundamentally what is an ESOP, how's it classified?

Rich Heeter: [01:25](#) An ESOP is a qualified retirement plan under the IRS guidelines and ERISA. It's very similar to a profit sharing plan except that the major difference is that the majority of the assets, its designed to be held in company employer securities. as opposed to publicly traded or mutual funds or securities of other firms.

Bret Keisling: [01:54](#) So Rich, when we hear the words, and you and I used the words as well, "employee owned," it's a little bit of a misnomer; that's not quite accurate, correct?

Rich Heeter: [02:02](#) That's correct. Because it is an employer qualified retirement plan the stock is actually held in a trust for the benefit of the participants and employees. The employees don't own the shares outright in their individual names for their collective benefit.

Bret Keisling: [02:21](#) So all of the employees benefit from the share owners as if he or she owned the shares. But unlike other business entity structures where a person is the shareholder, oftentimes, here it's for their benefit, but they don't take title to the shares themselves.

Rich Heeter: [02:39](#) That's correct.

Bret Keisling: [02:40](#) And because the shares are owned by a trust, every trust, regardless of whether it's a big university trust, whether it's a parent doing an educational trust for their children or grandchildren, or whether it's on an ESOP, that trust comes with what?

Rich Heeter: [02:40](#) A trustee. Or, trustees,

Bret Keisling: [02:57](#) And that's where we come in. Rich, why don't you talk a little bit about Capital Trustees.

Rich Heeter: [03:08](#) So Capital Trustees was formed in 2012 for the purpose of serving the ESOP community in transactions as well as ongoing engagements for companies that already have an ESOP in place. My background was in the financial services field for almost 30 years prior to starting Capital Trustees. And for about five years prior to the start up of Capital Trustees, I was a solo independent ESOP trustee. I met with Bret on the very first transaction that I was involved with. Bret was an advisor to the company that was setting up the ESOP. Fast forward five years later... and I'll let Bret tell, tell the background of himself, but I had grown the practice to the size where wanted to bring in a partner and I approached Bret and he accepted. So Capital Trustees was formed in 2012

Bret Keisling: [04:20](#) Going back, Rich, to our first interaction, with an ESOP transaction. You're right, I was a company council and my clients were the company and three brothers who were the selling shareholders. And you and I had a conversation where you thought that an ESOP might be an excellent exit strategy for the brothers, not an unusual story that we see in the ESOP world of the three brothers, one who wanted to retire immediately, one wanted to retire a year or so down the road and the other had a longterm plans of staying with the company. And the ESOP was a good way to meet all of the different exit strategy needs. So we got involved, we did our first transaction. And, you were named as, as the trustee for the company moving forward, correct?

Rich Heeter: [05:02](#) That's correct.

Bret Keisling: [05:03](#) And then life, you never can tell where it's going to bring you. I was company counsel at the time and they ended up, uh, I was hired to be the president and CEO of the company, which I did so, for about two and a half years with you as my trustee, right?

Rich Heeter: [05:03](#) Yes. Yeah.

Bret Keisling: [05:19](#) And so then in 2012 Rich you had built up an independent practice and the way that we describe it as Rich was trying to decide if he wanted to bring in a partner and whether it would increase the size of Rich's pie, or whether he would just have to share his pie... and I just knew that I liked pie. So we started working together in 2012 and a Rich one is to talk about the five years just in terms of Capital Trustees' growth and development and that sort of thing.

Rich Heeter: [05:45](#) Sure. So we have grown over the past five years to the point where we now serve as ongoing trustee for over 30 ESOP companies, probably over 35 now. We've done transaction work in 22 or more states. We've worked on transactions and in size from as small as a million dollars to a as large as \$350 million dollar transaction. So I'm pretty much every everywhere in, in between. Our largest ongoing clients probably we have a couple that are in excess of \$100 million, but on average I'd say we're probably in that \$10 to \$25 million sweet spot.

Bret Keisling: [06:42](#) And, and that's as of September 2017 if you're listening to this in the archives, what started five years ago as the \$2 million dollar sweet spot, you know, the \$10 to \$25 million is where we are now, but that will grow and develop. Rich tell me a little bit about the duty of the, of the trustee and can you just define for us the fiduciary duty than an ESOP trustee has?

Rich Heeter: [07:07](#) Sure. The fiduciary duty that, that we have is, is solely to act in the best interest of the participants and beneficiaries of the plan - that is above everything else that we do. How that relates to actual circumstances is; one of the, one of the duties of that is in one of the requirements is when we're doing a transaction is that the fiduciary can't pay more than, than fair market value for the shares of the company that the ESOP is purchasing and when we are a selling shares, we can't receive less than fair market value for those shares or what's also known as adequate consideration. So we have a fiduciary duty [that] is the highest duty available in our legal system.

Bret Keisling: [08:10](#) And Rich, the fiduciary duty is to the participants and the beneficiaries. And, just again, to clarify, that's not just the employees, right? There are participants who are not employees.

Rich Heeter: [08:22](#) Sure. There are participants who were, who have left employment, you know, it could be anywhere from five to 10 years ago. It's beneficiaries that are families of people who have who have passed on. It's for those that are out on disability. If they are an active member of the plan, not necessarily an active employee, they're covered under our duty. And that is who we owe the duty to. It's not to the company, it's not to management, it's not to any other party, it's not to the board. It's solely to the participants and the beneficiaries of the plan.

Bret Keisling: [09:11](#) So Rich, we've discussed a transactions a little bit where we either create new ESOPs are sometimes terminate ESOPs, but there's another aspect of the ongoing trustee work correct?

Rich Heeter: [09:22](#) Sure. And what that entails is the trustee acts as the shareholder a on an ongoing basis. So whether or not the ESOP trust owns 30 percent, 50 percent or 100 percent of the company, it acts as the shareholder for that percentage and we do things such as we vote the shares of the company stock when it requires a shareholder action, such as electing board of directors, making a decision on any sale of the stock, any, uh, just any basic issue that might require a shareholder vote. The largest issue that and responsibility that the trustee has though, is for determining the annual value of the shares that the ESOP trust holds by engaging an independent valuation firm to advise and assist the trustee in making that determination. One thing that I think there tends to be some confusion on out there is that the valuation advisor does not set the share price. It provides an opinion to the trustee as to the share price and the trustee is ultimately the one responsible, who has the fiduciary responsibility, to determine what that share price is. Every year.

Bret Keisling: [10:57](#) Rich, as you'll recall, a board member at a client of ours once asked about the role between the trustee and the valuator that said, "Let me get this straight, if the trustee thought that the valuator was simply wrong," they asked the question, "could we disavow the valuator's conclusion if we as trustee thought it was wrong?" And my answer surprised them, which is not only could we disavow, but we would have to, if we felt the valuator simply was wrong on the valuation and the valuation report. Can you just talk about that as it relates to our role and the evaluator?

Rich Heeter: [11:39](#) Sure. We, as I said before, we have the fiduciary responsibility to set the share price and no one else. If we were at such such odds that, you know, such so far apart that we had a, a problem with the valuation advisor, we would certainly have to do a big analysis as to why, and how we would go forth on determining the value. But uh, it would certainly cause a bit of a problem from our standpoint.

Bret Keisling: [12:17](#) All right, Rich. We're going to wrap up today's segment. And let me ask you -- and this wasn't, you didn't know that I'm about to ask this -- but of all the different aspects of work that we do as trustees, what is your favorite? What do you love doing the most?

Rich Heeter: [12:33](#) I really like the people that we deal with, but I think the coolest thing as a trustee that we get to do is our due diligence site meetings where we get to go visit the company and we get to see a kind of behind the curtain as to what these companies actually do and how they run and there's some really cool companies out there that we've been fortunate to work with that do some, you know, they're cool companies that make some really cool stuff or, or do some very neat work for their customers. So I'm just being exposed to things that I never even thought of that there's companies that actually do.

Bret Keisling: [13:24](#) You and I have actually experienced an adage; you and I have seen them make the sausage correct?

Rich Heeter: [13:30](#) You know, we actually, we have, yes.

Bret Keisling: [13:32](#) So we get in, we'll get factory floors, if it's a manufacturing facility, we get into the offices a lot of professional services firms, a lot of them doing really cool stuff and you're absolutely right. That was the same answer that I have, which is the coolest thing that I think is what we do is in the 25, 26 states we're currently in now is just traveling around and meeting the participants, seeing the work that's being performed and just getting a sense of what the companies are bringing to their communities and to the economy, let alone to all of the employee owners.

Rich Heeter: [14:09](#) Yeah. I think the thing that's most gratifying is the opportunities that we get to be part of in helping employees achieve financial retirement benefits that they wouldn't have otherwise. And many times it's keeping that company in a location and having the owners legacy continue on through the employees and participants.

Bret Keisling: [14:44](#) Well, Rich, thank you for your time today. This is going to wrap up of our first episode in our segment about Capital Trustees. We want to invite everyone to join us. Every Friday we'll be dropping a new episode of the ESOP podcast. There will be interviews with again, national ESOP leaders with a conversations between Rich and myself, and we're also going to be doing segments from the various conferences, regional and national conferences. Rich, as a matter of fact, you're speaking at the national conference in Las Vegas in November, aren't you?

Rich Heeter: [14:44](#) I am.

Bret Keisling: [15:20](#) I will be speaking during the conference, but I won't be speaking at the conference. All right. With that, thank you all very much. We'll look to see you next Friday. Have a great day.

Announcer: [15:31](#) Thank you for listening to The ESOP Podcast brought to you by Capital Trustees and their managing directors, Bret Keisling and Rich Heeter. Production assistance provided by Third Circle, Inc. and Brian Kiesling. Join us again next time for the ESOP podcast.