

# Bailey Glasser ERISA Team Defeats Motion to Compel Arbitration of ESOP Lawsuit

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Bailey Glasser attorneys representing a participant in the Henny Penny Corporation Employee Stock Ownership Plan (ESOP) have defeated motions to compel arbitration and to strike claims asserted on a class or representative basis, made by the ESOP's sponsoring employer and trustee, Henny Penny Corporation and Wilmington Trust, N.A. The lawsuit, *Brown v. Wilmington Trust, N.A.*, will proceed in federal court in the Southern District of Ohio, seeking relief on a representative basis for the ESOP as a whole.

The plaintiff's complaint alleges that Wilmington Trust, the ESOP's trustee, caused the ESOP to engage in an ERISA-prohibited transaction when in 2014 the ESOP bought all of the outstanding shares of Henny Penny common stock above its fair market value, for \$165,000,000. In a decision filed on July 24, 2018, District Judge Walter H. Rice held that an arbitration procedure added to the ESOP after the plaintiff had cashed out did not apply to her claims because she "did not agree to arbitrate and, even if she did, her specific claims fall outside the scope of the Arbitration Procedure." In his ruling, Judge Rice credited similar recent case law from the U.S. District Court for the Northern District of California, explaining: "Allowing the fiduciary to unilaterally require plan participants to arbitrate claims for breach of fiduciary duty 'would, in a sense, be allowing the fox to guard the henhouse.'"

The plaintiff is represented by Bailey Glasser attorneys Greg Porter and Ryan Jenny, and Murray Murphy Moul + Basil LLP attorney Brian Murphy. The decision is reported at *Brown v. Wilmington Trust, N.A.*, Case No. 3:17-cv-250, 2018 WL 3546186 (S.D. Ohio July 24, 2018).

## **Attorneys**

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## Practice Areas

ERISA, Employee Benefits & Trust Litigation