

# Bailey Glasser Secures Appellate Win in Employee Stock Ownership Plan Dispute

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On March 21, 2019, Bailey Glasser LLP achieved a significant victory in the US Court of Appeals for the Fourth Circuit in the case of *Brundle v. Wilmington Trust, N.A.* Affirming the trial court's March 2017 ruling in favor of our client, Tim P. Brundle, the Fourth Circuit found the trial judge did not err in concluding that Wilmington Trust's fiduciary failures caused the Constellis Employee Stock Ownership Plan (ESOP) to overpay for Constellis Group, Inc. stock by \$29,773,250, and entering judgment for the ESOP in that amount.

The lawsuit claimed that Wilmington Trust, the trustee for the ESOP, caused the ESOP to purchase more than \$200 million of Constellis stock for more than fair market value, violating federal pension law in the ERISA statute. Less than a year later, Constellis was sold and the ESOP was dissolved. Following a multi-day trial in the US District Court for the Eastern District of Virginia, District Judge Leonie M. Brinkema ruled that "the defendant [Wilmington] engaged in a prohibited transaction by failing to ensure that the ESOP paid no more than adequate consideration for the stock in Constellis and, as a result, damaged the ESOP by agreeing to overpay \$29,773,250.00 for the stock." Judge Brinkema found Wilmington Trust liable to the ESOP for that amount in damages for overpaying for the stock.

A three-judge panel of the Fourth Circuit affirmed the lower court decision in all respects. The appellate court observed that "[a]n employer's contributions to an ESOP ... constitute a valuable form of deferred compensation, rather than a gift to employees." The fiduciary obligations of an ERISA plan trustee to protect such plan assets are "the highest known to the law." Finding no clear error in Judge Brinkema's finding that Wilmington should have conducted a "more robust due diligence" into the stock transaction, the panel concluded that Wilmington breached its duties by overpaying for the Constellis stock.

The plaintiffs are represented in the appeal by Bailey Glasser ERISA litigation partners Gregory Y. Porter, Brian A. Glasser, and Ryan T. Jenny. The case is *Brundle v. Wilmington Trust, N.A.*, case number 17-1873, in the U.S. Court of Appeals for the Fourth Circuit.

## BAILEY GLASSER SECURES APPELLATE WIN IN EMPLOYEE STOCK OWNERSHIP PLAN DISPUTE

We are currently litigating other ESOP cases against Wilmington Trust in *Swain v. Wilmington Trust* (District of Delaware, involving the ISCO Industries, Inc. ESOP); *Brown v. Wilmington Trust* (Southern District of Ohio, involving the Henny Penny Corp. ESOP); and *Guidry v. Wilmington Trust* (District of Delaware, involving the Martin Resource Management Corp. ESOP). Contact Bailey Glasser's ERISA team if you have information about a Wilmington Trust ESOP, or any other ESOP.

### **Attorneys**

Brian A. Glasser

Ryan T. Jenny

Gregory Y. Porter

### **Practice Areas**

Appellate and Supreme Court Practice

ERISA, Employee Benefits & Trust Litigation