

Bailey Glasser Wins Complete Reversal in Seventh Circuit ERISA Case

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On Thursday, August 25, 2016, the United States Court of Appeals for the Seventh Circuit released its published opinion in *Allen v. GreatBanc Trust Co.*, No. 15-3569. In this case, Plaintiffs Lisa Allen and Misty Dalton allege that GreatBanc, as trustee of their employee stock ownership plan (the “Plan”), caused the Plan to enter into transactions prohibited under the Employee Retirement Income Security Act (“ERISA”), and breached fiduciary duties, by buying overvalued private stock on the Plan’s behalf. That stock was valued 22% lower just 22 days after the Plan purchased it.

The United States District Court for the Northern District of Illinois dismissed Allen and Dalton’s claims primarily on the grounds that the United States Supreme Court barred breach of fiduciary duty claims that do not plead “special circumstances,” in *Fifth Third Bancorp v. Dudenhoeffer*, 134 S. Ct. 2459 (2014), and the prohibited transactions claims were barred because the Plaintiffs had not pled facts disproving potentially applicable exemptions to ERISA’s list of prohibited transactions.

The Seventh Circuit reversed and remanded on all grounds. The court first held that the Plaintiffs’ prohibited transaction claims were not barred by a failure to plead around the exemptions, because the exemptions are affirmative defenses on which a defendant has the burden of proof. The court emphasized that “Congress saw fit in ERISA to create some bright-line rules, on which plaintiffs are entitled to rely.” Thus, the court “squarely” held “that the section 408 exemptions are affirmative defenses for pleading purposes, and so the plaintiff has no duty to negate any or all of them.”

The Seventh Circuit further held that the Plaintiffs’ breach of fiduciary duty claims should not have been dismissed based on *Dudenhoeffer*. That case ruled that, for publicly traded companies, it was inherently prudent to rely on the market price of stock unless “special circumstances” counseled otherwise. Here, the district court erred by applying *Dudenhoeffer* to require the Plaintiffs to plead “special circumstances” because there was no market price on the private stock for fiduciaries to rely upon. And “[a]lthough the plaintiffs could not describe in detail the process GreatBanc used, no such precision was essential. It was enough to allege facts from which a factfinder could infer that the process was inadequate.” In response to GreatBanc’s theory that the Plaintiffs were required to request the documents it relied on in making the investment decision before filing their claims, the

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court further noted that it would “decline to add a pre-pleading requirement that plaintiffs ask nicely for information they need—but cannot compel access to—before filing their complaint.”

The case was remanded to the district court for proceedings consistent with the opinion of the court.

Bailey Glasser argued the appeal on behalf of the Plaintiffs. The briefs were prepared by Gregory Porter, Ryan Jenny, and Patrick Muench. The Seventh Circuit’s opinion can be found [here](#).

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Practice Areas

Appellate and Supreme Court Practice

ERISA, Employee Benefits & Trust Litigation