

# Bailey Glasser Wins Summary Judgment in Employee Stock Ownership Plan Dispute

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**AUGUST 23, 2019, WASHINGTON, DC** - On August 21, 2019, Bailey Glasser LLP won a motion for summary judgment in the US District Court for the Northern District of Illinois in the case *McMaken v. GreatBanc Trust Company*, Case No. 17-cv-04983. The lawsuit claims that GreatBanc, the trustee for the Chemonics International, Inc. Employee Stock Ownership Plan (the “ESOP”), caused the ESOP to purchase \$180 million of Chemonics International, Inc. stock for more than fair market value, violating federal pension law in the ERISA statute. Granting the plaintiff judgment against GreatBanc’s affirmative defense of waiver and release, the court held the plaintiff did not waive claims against GreatBanc in a severance agreement he entered into with Chemonics because GreatBanc did not fall within a category of releasees that included fiduciaries to Chemonics. Rather, as a matter of law GreatBanc was a fiduciary only to the ESOP, and not to the plan-sponsoring employer that appointed it as the ESOP’s trustee.

The court made several important rulings of law in favor of the plaintiff and beneficiaries of employee benefit plans generally.

First, the court held that under both ERISA and the plan documents, GreatBanc cannot be considered a fiduciary of Chemonics because it acts on behalf of and owes duties to the ESOP and only the ESOP. Under ERISA’s “exclusive purpose” duty, a plan fiduciary, such as a trustee, must act “for the exclusive purpose of . . . providing benefits to participants and their beneficiaries.” This duty was separately echoed in the ESOP’s governing documents.

Second, the court recognized that under governing Seventh Circuit case law issued ten years earlier, Chemonics’ appointment of GreatBanc as the ESOP’s trustee did not make GreatBanc a fiduciary to the sponsor. The court explained it was well established that just because a plan trustee and a plan sponsor are both fiduciaries with respect to a plan it does not mean that either one is a fiduciary with respect to the other. “Their relationship is purely contractual.”

## BAILEY GLASSER WINS SUMMARY JUDGMENT IN EMPLOYEE STOCK OWNERSHIP PLAN DISPUTE

The Northern District of Illinois is the second court to weigh in on this issue. On September 13, 2018, the US Bankruptcy Court for the Eastern District of Virginia also held that GreatBanc was not a releasee under the separation agreement between McMaken and Chemonics.

The plaintiffs are represented by Bailey Glasser ERISA litigation partners Gregory Y. Porter and Ryan T. Jenny, and associate Patrick O. Muench. Bailey Glasser's ERISA practice represents participants in many ESOP lawsuits.

### **Attorneys**

Ryan T. Jenny

Patrick Muench

Gregory Y. Porter

### **Practice Areas**

ERISA, Employee Benefits & Trust Litigation