

# Judge Orders Trustee to Pay \$30 Million to ESOP

03.15.2017

A federal judge in the Eastern District of Virginia ruled that Wilmington Trust N.A., the trustee for an Employee Stock Ownership Plan sponsored by Constellis Group, Inc., a Virginia-based private security firm, owes ESOP participants \$30 million as result of a stock-purchase that violated the Employee Retirement Income Security Act of 1974 (ERISA).

Attorneys from Bailey Glasser represented the employee participants of the ESOP. They filed suit claiming that Wilmington caused the ESOP to purchase \$200 million-plus of Constellis stock at an inflated price, violating federal pension law and trustee duties. Less than a year later, Constellis was sold and the ESOP was dissolved.

United States District Court 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.” Brinkema found Wilmington liable for \$29.8 million in damages for overpaying for the company stock.

Bailey Glasser partner Gregory Porter said, “The decision lays out important new guidance for ESOP trustees on many valuation issues. Two stand out. First, the court held that valuation firms and the trustees cannot blindly accept management projections but must scrutinize projections for consistency with past projections and evaluate the self-interest of managers making the projections. Second, the court held that it was improper for the ESOP to pay a control premium when the selling shareholders retained control of the board of directors; instead, the ESOP should have received a discount for lack of control. Both are common problems in ESOP transactions.”

ESOP participants were represented by Gregory Porter, Brian Glasser, Ryan Jenny, Thanos Basdekis and Patrick Muench.

## **Attorneys**

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### **Practice Areas**

ERISA, Employee Benefits & Trust Litigation