

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

GREGORY GODFREY, et al.,

Plaintiffs,

v.

**GREATBANC TRUST COMPANY, et
al.,**

Defendants.

Case No. 1:18-cv-07918

Judge Matthew F. Kennelly

Magistrate Judge Michael T. Mason

**PLAINTIFFS' MOTION FOR ATTORNEYS' FEES,
COSTS, AND CASE CONTRIBUTION AWARDS**

Pursuant to Federal Rules of Civil Procedure 23 and 54(d)(2), Plaintiffs respectfully request that the Court enter an order granting an award of attorneys' fees, costs, and case contribution awards. Plaintiffs submit the following in support of this Motion:

- (1) Plaintiffs' Memorandum of Law in Support of Motion for Attorneys' Fees, Costs, and Case Contribution Awards;
- (2) Declaration of Mark G. Boyko (submitted with Plaintiffs' Unopposed Motion for Final Approval of Settlement);
- (3) Declaration of Thomas E. Clark Jr. (submitted with Plaintiffs' Unopposed Motion for Final Approval of Settlement); and
- (4) [Proposed] Final Judgment and Order Granting Plaintiffs' Motion for Final Approval of Settlement and Motion for Attorneys' Fees, Costs, and Case Contribution Awards (submitted with Plaintiffs' Unopposed Motion for Final Approval of Settlement).

Dated: August 19, 2022

Respectfully submitted,

By: /s/ Mark G. Boyko
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that, on August 19, 2022, I caused a true and correct copy of the foregoing to be filed electronically using the Court's CM/ECF system and to be thereby served upon all registered participants identified in the Notice of Electronic Filing in this matter on this date.

/s/ Mark G. Boyko

Mark G. Boyko

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Case No. 1:18-cv-07918

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DECLARATION OF MARK G. BOYKO

I, Mark G. Boyko, declare as follows:

1. I make this Declaration of my own personal knowledge, and if called as a witness, I would and could testify competently to the matters stated herein.

2. I am a partner at the law firm Bailey & Glasser LLP (“Bailey Glasser”).

3. I and other attorneys at my firm have been actively involved in this lawsuit from the beginning of the investigation to the present including but not limited to investigating and preparing the complaints, meeting and conferring with defense counsel regarding discovery and case management, reviewing Defendants’ and third-party document productions, taking depositions, representing Plaintiffs at hearings and case conferences, retaining experts, submitting Plaintiffs’ partial summary judgment motions and opposing Defendants’ motions for summary judgment

4. I make this declaration in support of Plaintiffs’ Unopposed Motion for Final Approval of Settlement and Plaintiffs’ Motion for Attorneys’ Fees, Costs and Case Contribution Award. The Court appointed me, other attorneys at Bailey Glasser and Thomas E. Clark of the

Wagner Law Group counsel for a class of McBride & Son Employee Stock Ownership Plan participants on February 21, 2021. *See* Dkt. 205.¹

A. Background and Experience of Bailey Glasser Attorneys

5. Class Counsel has decades of experience with complex ERISA class action litigation of this type. The experience of the attorneys at co-counsel, the Wagner Law Group, is set forth in the Declaration of Thomas E. Clark (the “Clark Decl.”) submitted contemporaneously with my Declaration.

6. I have been working on ERISA class actions since 2007. My partner, Gregory Porter, has been working on class actions since 1998. He and I have served together as lead or co-lead counsel for plaintiffs in many important ERISA cases, including *Intel v. Sulyma*, 140 S. Ct. 768 (2020) (ongoing case regarding the prudence and diversification of certain options in a 401(k) plan), *Bekker v. Neuberger Berman Plan Inv. Comm.*, No. 16-6123 (S.D.N.Y.) (\$17 million settlement in class action concerning the prudence of one fund in a 401(k) plan), *Cryer v. Franklin Resources, Inc.*, No. 16-4265 (N.D. Cal.) (\$26.9 million settlement in class action concerning the prudence and loyalty of offering proprietary investments in a 401(k) plan), *Leber v. Citigroup 401(k) Plan Inv. Comm.*, No. 07-9329 (S.D.N.Y.) (class settlement concerning prudence and fees of certain plan investment options), *Schultz v. Edward D. Jones & Co., L.P.*, No. 16-cv-1346 (E.D.Mo) (same); *Stegemann v. Gannet Co., Inc.*, 970 F.3d 465 (4th Cir. 2020) (case challenging fiduciary decisions to continue offering legacy stock from a parent company after a spin-off).

7. The ERISA attorneys working on this matter also have extensive experience in lawsuits under ERISA challenging Employee Stock Ownership Plan (ESOP) transactions. *See Brundle v. Wilmington Trust Ret. & Int’l Servs. Co.*, 241 F. Supp. 3d 610 (E.D. Va. 2017) (\$29.7

¹ Together The Wagner Law Group and Bailey Glasser are referred to herein as “Class Counsel.”

million trial judgment); *Allen v. GreatBanc Trust Co.*, 835 F.3d 670 (7th Cir. 2016) (reversing trial court ruling on motion to dismiss in an ESOP class action; lawsuit settled for \$2.3 million); *Jessop v. Larsen*, No. 14-916 (D. Utah) (\$19.8 million settlement secured for ESOP plan participants in 2017); *Swain v. Wilmington Trust, N.A.*, No. 17-71 (D. Del.) (\$5 million settlement); *Casey v. Reliance Trust Co.*, No. 18-424 (E.D. Tex.) (\$6.25 million settlement for ESOP plan participants); *Choate v. Wilmington Trust, N.A.*, No. 17-250-RGA (D. Del.) (\$19.5 million settlement); *Blackwell v. Bankers Trust Co. of South Dakota*, No. 18-141 (S.D. Miss.) (\$5 million settlement); *Fink v. Wilmington Trust, N.A.*, No. 19-1193 (D. Del.) (\$5.5 million settlement); and *Nistra v. Reliance Trust Co.*, No. 16-4773 (N.D. Ill.)(\$13.36 million settlement). In *Brundle*, Mr. Porter led a team of lawyers in an ERISA case that resulted in a \$30 million judgment for a class of ESOP plan participants. *Brundle*, 241 F. Supp. 3d 610. Defendants vigorously appealed the judgment, but the Fourth Circuit affirmed the \$30 million judgment in all respects. *See Brundle v. Wilmington Trust, N.A.*, 919 F.3d 763 (4th Cir. 2019). Mr. Porter argued the appeal for Plaintiffs-Appellees before the Fourth Circuit.

8. Earlier this year, Mr. Porter was recognized by Chambers and Partners as being in the top band, “Band 1” for ERISA Litigation: Mainly Plaintiffs. Including Mr. Porter, only six attorneys achieved that distinction, the highest available. Chambers rankings are based on factors including technical legal ability, professional conduct, client service, diligence and commitment.

9. Ryan T. Jenny is a partner at Bailey Glasser who joined the firm in 2015 after more than fifteen years representing ERISA defendants while at large corporate firms in the District of Columbia and New York. Mr. Jenny represented defendants in many fiduciary duty actions involving employee benefit plan investment in employer stock, such as *Brundle v. Wilmington Trust Ret. & Int’l Servs. Co.*; *Swain v. Wilmington Trust, N.A.*; *Casey v. Reliance Trust Co.*; and

Choate v. Wilmington Trust, N.A.; *Crowley v. Corning, Inc.*, No. 02-6172 (W.D.N.Y.); *Holtzschler v. Dynege, Inc.*, No. 05-3293 (S.D. Tex.); *Crocker v. KV Pharm. Co.*, No. 09-198 (E.D. Mo.); *In re BP p.l.c. ERISA Litig.*, MDL No. 10-2185 (S.D. Tex.); and *Knight v. Lavine*, 12-611 (E.D. Va.), as well as in actions involving various other ERISA fee, funding and fiduciary issues, such as *Alexander-Jones v. Wal-Mart Stores, Inc.*, No. 10-3005 (N.D. Cal.); *In re Honda of Am. Mfg.*, No. 08-1059 (S.D. Ohio); and *Sara Lee Corp. v. American Bakers Ass'n Ret. Plan*, No. 10-819 (D.D.C.). Mr. Jenny is a member of the firm's ERISA team and works on all of our ESOP cases.

10. Patrick Muench is a partner with Bailey Glasser LLP who has specialized in complex litigation since 2009. Mr. Muench has served as counsel on ERISA cases involving breach of fiduciary claims, including *Brundle v. Wilmington Trust Ret. & Int'l Servs. Co.*; *Swain v. Wilmington Trust, N.A.*; *Casey v. Reliance Trust Co.*; and *Choate v. Wilmington Trust, N.A.* Mr. Muench is a member of the firm's ERISA team and works on all of our ESOP cases.

11. Bailey Glasser currently represents plaintiffs in several other ESOP lawsuits. Additional background on the qualifications of Class Counsel were submitted as part of the previously filed Motion for Class Certification.

B. Work Performed by Class Counsel

12. This was an extremely hard-fought litigation in which Class Counsel devoted a tremendous amount of time and effort to this case. Among other things we:

- a. conducted an in-depth investigation of multiple transactions involving the McBride & Son Employee Stock Ownership Plan;
- b. drafted three separate complaints, including reviewing and analyzing a volume of discovery to research and draft the operative complaint, a 607 paragraph, 152 page, 16 count amended complaint alleging that Defendants violated ERISA in connection with three transactions: (1) a Recapitalization

in late 2013 of MS Companies, Inc. to a limited liability corporation (the “2013 Recapitalization”); (2) the payment of excessive compensation to executives, including the distribution of Class B and Class C Units of MS Companies, LLC from 2013–2017, thereby diluting the value of the Plan (the “Compensation Decisions”); and (3) the purchase of all the shares of MS Capital stock held by the Plan at a below fair market price of \$187 for a total of consideration of \$16,493,664, which consisted of 80,094.3643 shares for \$14,977,646 in cash and 8,107.0476 shares worth \$1,516,018 transferred to MS Capital in payment of an outstanding loan from the company to the ESOP (the “2017 Transaction”). (*see* Dkt. 127, the “SAC”);

- c. responded to three separate motions to dismiss (*see* Dkts. 23, 48, 111) and defeated two separate motions to dismiss the SAC in substantial part; (*see* Dkt. 154, the “MTD Order”);
- d. drafted comprehensive discovery requests to Defendants and third parties;
- e. reviewed and analyzed approximately 100,000 pages of discovery produced by the Parties and various third parties;
- f. drafted a dozen letter communications to Defendants to obtain relevant and proportional discovery to the SAC;
- g. conferred with Defendants and third parties to obtain relevant and proportional discovery to the SAC;
- h. drafted several motions to compel discovery that were successful in substantial part;

- i. took the depositions of four current or former McBride executives, one non-executive McBride employee, one GreatBanc executive, McBride's investment banker, and GreatBanc's financial advisor;
- j. defended Plaintiffs Sheldon, Godfrey, and Kopinski's depositions;
- k. successfully moved for class certification and responded to Defendants' arguments opposing certification (*see* Dkt. 205);
- l. researched expert testimony supporting their allegations and retaining four separate sophisticated experts;
- m. deposed Defendants' four expert witnesses
- n. moved to exclude Defendants' expert testimony seeking to introduce evidence prior to 2013 and on topics not included in Defendants' initial disclosures and obtaining limited additional discovery in response to this motion (*see* Dkt. 248);
- o. opposed Defendants' motion to exclude the testimony of Plaintiffs' expert Daniel Van Vleet. (*see* Dkt 280);
- p. prepared two motions for partial summary judgment and responded to Defendants' oppositions to those motions (*see* Dkts. 265 and 266);
- q. opposed Defendants motions for summary judgment (*see* Dkt. 273);
- r. prepared a lengthy mediation statement and reply to Defendants' mediation statement in advance of the parties' first mediation on July 28, 2021;
- s. engaged in two full-day mediation sessions before Robert A. Meyer of JAMS on July 28, 2021 and April 18, 2022;

- t. negotiated with Defendants the terms of Settlement and drafted the papers associated with Plaintiffs' unopposed motion and incorporated memorandum of law for preliminary approval of settlement (*see* Dkt. 308 and 310);
- u. drafted class notice and revised form of the class notice, incorporating the Court's commentary on the record on May 24, 2022 (*see* Dkts. 311 and 312);
- v. invited bids for settlement administrator and retained ILYM Group, Inc. ("ILYM") following review of ILYM's extensive experience handling class action settlements, including ERISA settlements;
- w. worked with ILYM to create a settlement website for Class Members who wished to obtain additional information about the Settlement; and
- x. prepared the present motions and supporting papers.

13. Since this case was initiated, this litigation has been vigorously litigated. Plaintiffs successfully defended their pleadings, defeating in substantial part Defendants' Motions to Dismiss the SAC. *See* Dkt. 154. The Parties engaged in robust discovery. They propounded and responded to several written discovery requests including, 73 document requests and nine interrogatories Plaintiffs directed to Defendant GreatBanc, 84 document requests and nine interrogatories Plaintiffs directed to McBride and 38 document requests and 21 interrogatories Defendants directed to Plaintiffs. Plaintiffs supplemented their document requests and interrogatories during the course of discovery and following the Court's order on Defendants' motion to dismiss the SAC. The Parties' counsel received and reviewed approximately 100,000 pages of discovery produced by the Parties and various third Parties. Class Counsel retained and

consulted with four experts, who prepared detailed reports and analyses on valuation, due diligence, and compensation. Defendants' counsel likewise retained and consulted with five experts, who prepared reports on similar topics. Each side deposed all the experts on the other side. The Parties also took fourteen fact depositions of eleven different witnesses. Plaintiffs took the depositions of four current or former McBride executives, one non-executive McBride employee, one GreatBanc executive, McBride's investment banker, and GreatBanc's financial advisor. All of these depositions were attended by Defendants' counsel, who also examined some of those witnesses. Defendants took the deposition of the three named Plaintiffs.

14. In the spring of 2021, the parties engaged in extensive arm's-length negotiations with Defendants with the assistance of a highly experienced and well-respected neutral mediator, Robert E. Meyer, JAMS. The Parties each drafted and submitted comprehensive mediation statements to Mr. Meyer that were shared with all mediation attendees and focused all sides on the key issues. Counsel for the Parties (as defined in the Settlement Agreement) attended a one-day in person and partly virtual mediation at the JAMS offices in New York on July 28, 2021. The attendees vigorously engaged in the mediation process, during which the Parties' counsel each gave presentations to Mr. Meyer. Despite much deliberation, discussion, and compromise, the Parties were not able to reach a resolution at that time. Consequently, after summary judgment briefing was submitted by all side, the Parties engaged in another all-day virtual mediation on April 7, 2022 with the same mediator. No global settlement was reached that time, but the parties remained committed to vigorous negotiations with the continued help of Mr. Meyer over the following weeks. These negotiations were unsuccessful until April 18, 2022, when the Parties did reach an agreement. The parties informed the Court on the same day.

15. The case settled after the case was sufficiently advanced *e.g.* after the completion of fact and expert discovery, motion practice to exclude fact and expert discovery and the submission of the parties summary judgment papers and opposition to those papers.

C. Class Counsel's One Third Contingency Fee Agreements With the Named Plaintiffs is Market Rate

16. The named Plaintiffs, Gregory Godfrey, Jeffrey Sheldon, and Debra Kopinski entered into engagement agreements with Class Counsel in which Plaintiffs agreed to a one-third contingency fee, and to reimbursement of expenses in the event that the action was successfully resolved. A contingency fee of one third is the typical market rate to provide ERISA class action representation. Clients of Bailey Glasser's in other ERISA class action cases sign similar engagement agreements in which they agree for Bailey Glasser attorneys to advance the costs of the litigation and receive one third of any monetary recovery and/or judgments.

17. In my experience, the market for experienced and competent lawyers willing to pursue complex ERISA class action litigation is a national one and the rate of one-third of total monetary recovery, plus expenses, is the market rate that Courts have to be reasonable in many other complex ERISA breach of fiduciary duty actions in the Seventh Circuit as set forth below:

- a. *Allegretti v. Walgreen Co.*, No. 19-5392, 2022 WL 484216, at *2 (N.D. Ill. Jan. 4, 2022) (approving 1/3 of \$13.75 million monetary recovery plus expenses);
- b. *Bell v. Pension Comm. of ATH Holding Co., LLC*, No. 15-2062, 2019 WL 4193376, at *3 (S.D. Ind. Sept. 4, 2019) (approving 1/3 of \$23.65 million monetary recovery plus expenses);
- c. *Spano v. Boeing Co.*, No. 06-743, 2016 WL 3791123 at *3-4 (S.D. Ill. Mar. 31, 2016) (approving 1/3 of \$57 million monetary recovery plus expenses);

- d. *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 WL 4398475, at *3–4 (S.D. Ill. July 17, 2015) (approving 1/3 of \$60 million monetary recovery plus expenses);
- e. *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 WL 375432, at *2 (S.D. Ill. Jan. 31, 2014) (approving 1/3 of \$30 million monetary recovery plus expenses);
- f. *Nolte v. Cigna Corp.*, No. 07-2046, 2013 WL 12242015, at *4 (C.D. Ill. Oct. 15, 2013) (approving 1/3 of \$35 million monetary recovery plus expenses);
- g. *George v. Kraft Foods Global*, No. 07-1713, 2012 WL 13089487, at *4 (N.D. Ill. June 26, 2012) (approving 1/3 of \$9.5 million monetary recovery plus expenses);
- h. *Will v. General Dynamics Corp.* No. 06–698, 2010 WL 4818174, at *3 (S.D. Ill. Nov. 22, 2010) (approving 1/3 of \$15 million monetary recovery, and finding “the market rate for complex plaintiffs’ attorney work in this [ERISA] case and similar cases is a contingency fee” and agreeing “a one-third fee is consistent with the market rate”); and
- i. *Martin v. Caterpillar Inc.*, No. 07-1009, 2010 WL 11614985, at *6 (C.D. Ill. Sept. 10, 2010) (approving 1/3 of \$16.5 million monetary recovery plus expenses).

18. Class Counsel’s depth of experience with ESOP and ERISA claims and class action litigation allowed counsel to pursue the case and negotiate a settlement that capitalized on the claims’ strengths while taking into account the risks of continued litigation.

19. Class Counsel has always been confident in their chances of success in this matter. However, based upon my 15 years of experience in litigating ERISA breach of fiduciary and prohibited transaction matters, ERISA breach of fiduciary class actions involve tremendous risk, require finding and obtaining opinions from expensive, unconflicted, consulting and testifying experts in finance, investment management, fiduciary practices, and related fields, and are extremely hard fought and well defended. And in the context of ERISA breach of fiduciary actions, this case was uniquely complex and involved novel and untested allegations associated with three separate complex ESOP transactions.

20. Only a small number of plaintiffs' firms have the necessary expertise and are willing to take the risk and devote the resources to litigate complex ERISA fiduciary breach cases. Within this small market of firms, in my experience there is even a smaller amount of law firms that would have the expertise and resources to bring a case such as this one, given the novel and complex allegations and the resources necessary to litigate the case. Bailey Glasser makes long term and expensive commitments to cases such as this one in order to ensure its clients receive a full recovery for their claims. Indeed, in light of the complexity and scope of this action, Class Counsel had to forego other cases once they had agreed to represent the Named Plaintiffs and Class in this Action.

21. As discussed above and in the Clark Decl. because of these stakes and the complexity of the allegations of wrongdoing, Class Counsel dedicated substantial resources to this litigation, including thousands of hours of attorney time and the retention of four sophisticated experts. It is my opinion that Class Counsel's zealous dedication and the resources it applied to this matter was assessed by Defendants in deciding to settle this matter prior to the Court's summary judgment order, trial, and/or potential appeals.

22. As further described in Plaintiffs' Motion for Attorney Fees, Costs, and a Case Contribution Award, I believe these facts are supportive of Plaintiffs' fee request for one-third of the total \$16.5 million recovery in this action in conformity with Seventh Circuit case law.

D. Summary of Time and Expenses of Bailey Glasser Attorneys

23. Attorneys and paralegals at Bailey Glasser have collectively expended 4,989 hours litigating this case since its inception. When combined with Class Counsel from the Wagner Law Group, Plaintiffs' counsel have expended 9,073.85 hours litigating this case. The total requested fee of \$5.5 million represents 33.33% percent of the Gross Settlement Fund. The total lodestar as of this date for Bailey & Glasser is \$2,890,951 and together with the Wagner Law Group, Class Counsel's lodestar is \$5,910,025.50.² Thus, the fee request is below 1.0 — meaning that it is less than the reasonable hourly rate with no multiplier for the risks and uncertainties in contingent-fee litigation such as this.

24. The below summary of time and expenses was taken from computer-based timekeeping programs, in which Bailey Glasser., maintained their fees and expense records.

25. Bailey Glasser's fee summaries demonstrate the amount of time spent on this litigation and how Plaintiff's counsel's lodestar was calculated.³ Given the market where Class Counsel litigated the case, and the skills and experience required to litigate, Bailey Glasser is using the following rates in determining the lodestar:

Name	Position	Hours	Hourly Rate	Lodestar
Brian Glasser	Partner	65.8	\$975	\$64,155
Greg Porter	Partner	601.1	\$900	\$540,990
Patrick Muench	Partner	455.3	\$650	\$295,945

² Class Counsel also anticipates contributing additional time and effort to this case, including continuing to oversee settlement administration.

³ Time spent by legal assistants and law clerks were not billed.

Ryan Jenny	Partner	336.8	\$750	\$252,600
Mark Boyko	Partner	1,730.1	\$650	\$1,124,565
Alex Serber	Associate	726.5	\$425	\$308,762.50
Laura Babiak	Associate	148.5	\$370	\$54,945
Melissa K. Clay	Paralegal	115.1	\$265	\$30,501.50
Melissa Chapman	Paralegal	394.3	\$275	\$108,432.50
Violet Ramos	Paralegal	380.3	\$265	\$100,779.50
Patricia Wilson	Paralegal	25.0	\$265	\$8,875
Sue Polston	Paralegal	10.0	\$265	\$2,650
Total		4,989		\$2,890,951

26. In setting these rates, Bailey Glass is cognizant of the rates approved in other ERISA class actions cases. Below is an excerpt from a Valeo Group Report showing the 2021 market rates for class action litigation to be significantly higher than Bailey Glasser's rates and that the market rates for such work increases on a yearly basis.

Class Action

Overall	2016	2017	%	2018	%	2019	%	2020	%	2021	%
	Rate	Rate		Rate		Rate		Rate		Rate	
AMLAW (1-10)											
Senior Partner	\$901	\$945	5%	\$982	4%	\$1,015	3%	\$1,075	6%	\$1,134	5%
Partner	\$789	\$827	5%	\$869	5%	\$918	6%	\$966	5%	\$1,017	5%
Counsel	\$685	\$722	6%	\$755	5%	\$795	5%	\$837	5%	\$879	5%
Senior Associate	\$551	\$577	5%	\$606	5%	\$638	5%	\$674	6%	\$710	5%
Associate	\$446	\$468	5%	\$490	5%	\$515	5%	\$540	5%	\$568	5%
Support Staff	\$379	\$400	5%	\$422	6%	\$443	5%	\$465	5%	\$489	5%
Overall	\$625	\$656	5%	\$687	5%	\$721	5%	\$759	5%	\$799	5%

27. As noted above, Class Counsel expect to contribute additional time and resources relating to Plaintiffs' forthcoming motion for final approval, the Fairness Hearing, and subsequent Settlement administration and oversight. Based on my experience supporting and supervising similar settlements, I expect that Class Counsel will expend an additional 30 to 80 hours of professional time after the date of this Declaration.

28. All of the work of Class Counsel has been undertaken on a contingent basis. To date, Class Counsel have not been compensated for any of this work.

29. Because of our experience litigating similar ERISA cases, Class Counsel was able to efficiently and effectively litigate this action. In my professional opinion, and based on my personal knowledge of the work that was performed and the requirements of this case and similar cases, all of the time expended on this action by Class Counsel was reasonable and necessary.

30. While a lodestar cross check is not necessary under Seventh Circuit jurisprudence (*see Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011)) (“consideration of a lodestar cross check is not an issue of required methodology”), a lodestar multiplier below 1.0 is reasonable — indeed, below reasonable — for litigation of this type.

E. Expenses

31. Bailey Glasser has incurred \$ 516,557.07 in litigation expenses, the bulk of those expenses were fees for Plaintiffs’ experts. When combined with expenses incurred by The Wagner Law Group, the total expenses incurred was \$954,069.47. All of the expenses were necessary and appropriate for the prosecution of this action, and all are of the type that are customarily incurred in litigation and routinely charged to clients billed by the hour. Here, Class Counsel retained four experts: Daniel Van Vleet, a valuation expert, Charles Goldman a due diligence expert, Mark Johnson, a retirement plan due diligence expert, and Stephen Kirkland, a compensation expert. In Class Counsel’s experience, up to four experts are necessary to prosecute a complex ESOP lawsuit. The expert expenses in this case ran all the way through summary judgment where three expert opinions were offered in support of Plaintiffs’ partial motion for summary judgment and in opposition to Defendants’ motions for summary judgment — which were also supported by expert testimony.

32. The next largest categories of expenses were for maintaining the document database, deposition and trial transcripts and travel expenses. Travel expenses were necessary as many witnesses resided outside this district and some of the attorneys working on the case traveled to Chicago for hearings.

33. In total, expenses by Class Counsel fell into the following categories:

Item	Total Cost
Copying/Printing	\$1,301.20
Mediators	\$13,433.33
Court fees	\$1,694.50
Document Database	\$80,768.82
Experts/Consultants	\$763,796.04
Research	\$6,259.59
Outside Delivery Servs	\$4,142.51
Dep and Trial Transcripts	\$60,246.98
Travel	\$22,426.50
Total	\$954,069.47

F. The Named Plaintiffs' Should Receive Contribution Awards

34. The Named Plaintiffs took steps to protect the interests of the Class and spent time pursuing the claims underlying this matter. The Named Plaintiffs' decision to pursue this case as a class action, and not simply seek individual damages, directly benefited the Class. The Named Plaintiffs provided documents related to his involvement in the ESOP, each prepared for and sat for a deposition, and maintained frequent contact with Class Counsel throughout the litigation and settlement process. Accordingly, Class Counsel requests that the Court approve the requested case contribution awards of \$25,000 for the three Named Plaintiffs.

G. No Objections Have Been Submitted

35. The Settlement Notice that was approved by the Court disclosed the terms of the Settlement and also contained a "Statement of Attorneys' Fees, Expenses, and Service Awards for

Named Plaintiffs. Dkt. 312-1 at 8–9. To date, none of the class members have objected to the Settlement terms or the proposed fees, expenses, or case contribution awards.

I declare, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed at St. Louis, Missouri this 19th day of August 2022.

/s/ Mark G. Boyko _____

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Defendants.

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DECLARATION OF THOMAS E. CLARK

I, Thomas E. Clark, declare as follows:

1. I make this Declaration of my own personal knowledge, and if called as a witness, I would and could testify competently to the matters stated herein.

2. I make this declaration in support of Plaintiff's Unopposed Motion for Final Approval of Settlement and Plaintiff's Motion for Attorneys' Fees, Costs and Case Contribution Award.

3. I have been actively involved in this lawsuit from the beginning of the investigation to the present including but not limited to investigating and preparing the Complaint, meeting and conferring with defense counsel regarding discovery and case management, reviewing Defendant's and third-party document productions, taking depositions, representing Plaintiffs at hearings and case conferences, retaining experts, submitting Plaintiffs' partial summary judgment motions and opposing Defendants' motions for summary judgment. The Court appointed me and

attorneys at the law firm Bailey Glasser as counsel for the class of McBride & Son Employee Stock Ownership Plan participants on February 21, 2021. *See* Dkt. 205.

A. Background and Experience of Attorneys at The Wagner Law Group

4. I am a partner and Chief Operating Officer of The Wagner Law Group, P.C., (“WLG”). WLG is a nationally recognized law firm in the areas of ERISA & Employee Benefits, which includes the distinct areas of Fiduciary Compliance, Retirement Plans, ERISA Litigation, ESOPs, Executive Compensation & Nonqualified Plans, Welfare Benefit Plans, Retiree Medical Trusts™ and PBGC, as well as Employment, Labor & Human Resources, Investment Management, and Independent Fiduciary Services (among other things).

5. WLG has a Tier 1 ranking from *U.S. News & World Report* in the areas of ERISA and employee benefits law for 2022. The firm has offices in Boston, Lincoln (Massachusetts), Washington D.C., New York, Chicago, Boynton Beach, Tampa, St. Louis, San Francisco, Los Angeles, and San Diego. WLG provides legal advice to its clients concerning employee benefit matters to large, small and nonprofit corporations as well as individuals and government entities worldwide including decades of legal advice to plan sponsors and trustees involving ESOPs. WLG’s attorneys include those who are AV-rated by Martindale-Hubbell, Fellows of the American College of Employee Benefits Counsel, an invitation-only organization of nationally recognized employee benefits lawyers as well as those who have been named to the prestigious *Super Lawyers* lists which highlight outstanding lawyers based on a rigorous selection process and recognized as *Best Lawyers*® in the United States for 2022.

6. I have specialized knowledge in employee benefits litigation since 2007. Notably, I was part of the litigation team that successfully petitioned the United States Supreme Court in the first and only ERISA 401(k) excessive fee case taken by the Supreme Court in *Tibble v. Edison International*. In a 9-0 unanimous decision, the Supreme Court vacated the Ninth Circuit’s

affirmance of the summary judgment order and held that an ERISA fiduciary has a continuing duty to monitor plan investments and remove imprudent ones regardless of when they were added. *Tibble v. Edison Int'l*, 575 U.S. 523 (2015). This was a seminal decision in ERISA and employee benefits litigation that later resulted (after my departure) in a judgment of \$13.4 million in plan losses and investment opportunity for the class. *Tibble*, No. 07-5359, Dkts. 570, 572 (C.D. Cal. Aug. 16, 2017). I have represented classes of ERISA plan participants in several ERISA breach of fiduciary duty class actions in the Seventh Circuit in which large settlements were approved on behalf of classes of ERISA plan participants. See *George v. Kraft Foods Global Inc. et al*, No. 08-3799 (N.D. Ill.)(\$9.5 million monetary recovery); *Abbott v. Lockheed Martin Corp. et al*, No. 06-0701–MJR. (S.D. Ill.)(\$60 million monetary recovery); *Martin v. Caterpillar Inc., et al*. No. 07-1009 (C.D. Ill.)(\$16.5 million monetary recovery); *Beesley v. Int'l Paper Co.*, No. 06-703 (S.D. Ill.)(\$30 million monetary recovery); *Nolte v. Cigna Corp.*, No. 07-2046 (C.D. Ill.)(\$35 million monetary recovery). I have done so as well in courts outside the Seventh Circuit. See e.g., *Krueger v. Ameriprise Financial Inc. et al*, No. 11-2781 (D. Minn.)(\$27.5 million monetary recovery for class); *In re Northrup Grumman Corp. ERISA Litigation*, No. 06-6213 (C.D. Cal.)(\$12.375 million monetary recovery).

7. I am regularly and extensively quoted as an ERISA and employee benefits expert by news outlets such as *Reuters*, the *Associated Press*, *Bloomberg*, and *Forbes*. I have been recognized by *U.S. News & World Report's* Best Lawyers® in the area of Employee Benefits (ERISA) Law since the 2021 edition. Since 2013, I have taught the course ERISA Fiduciary Law as an adjunct professor at The Washington University in St. Louis School of Law. I am currently scheduled to teach a course as an adjunct this fall at Boston University Law School entitled ERISA

Regulation of Retirement Plans. I regularly speak on ERISA litigation breach of fiduciary duty claims at national ERISA seminars and industry conferences.

8. I have identified in paragraph 15 other WLG attorneys who have worked on this case under my direction. Among these attorneys, Jordan D. Mamorsky has litigated this matter with me as counsel of record for Plaintiffs. Mr. Mamorsky is of-counsel at WLG and has substantial experience as counsel on ERISA cases involving complicated ERISA fiduciary duty issues. Specifically, Mr. Mamorsky has represented proposed classes and classes of ERISA plan participants in several ERISA breach of fiduciary duty actions in the First, Second, and Eleventh Circuits, including *Cervantes v. Invesco Holding Company (US), Inc. et al*, 18-2551 (N.D. Ga.)(settling for \$3.5 million before discovery occurred); *Beach et al. v. JPMorgan Chase Bank et al*, 17-563 (S.D.N.Y.)(settling for \$ 9 million following submission of summary judgment papers); *In Re GE ERISA Litigation*; 17-12123 (D. Mass). During the course of his career, Mr. Mamorsky has also prosecuted well-publicized complex securities fraud cases on behalf of institutional investors. Mr. Mamorsky, for example, was on the team of litigators who secured a \$275 million settlement with Bear Stearns Companies, plus a \$19.9 million settlement with Deloitte & Touche LLP, Bear Stearns' outside auditor in *In re Bear Stearns Cos. Inc. Securities Litigation*, 08-MDL-1963 (S.D.N.Y) on behalf of lead plaintiff, The State of Michigan Retirement Systems and a class of investors and on the team of litigators who obtained a \$34.5 million recovery in *Patel v. L-3 Communications Holdings, Inc.*, No. 14-6038 (S.D.N.Y.) on behalf of lead plaintiffs City of Pontiac General Employees' Retirement System, Local 1205 Pension Plan and City of Taylor Police and Fire Retirement System and a class of investors. Mr. Mamorsky is a member of WLG's ERISA litigation team and works on the majority of our ERISA litigation cases. Mr. Mamorsky has served as a regular columnist for *Thomson Reuters' Journal of Compensation*

and Benefits, was a contributing author of the Pension Claims and ERISA chapter of Norton Bankruptcy Law and Practice; has written for publications including *Bloomberg Law*, *Lexis Nexis Practice Advisor* and *Morningstar Advisor*; and has been quoted in publications such as *Law 360*, *Pensions & Investments* and *FundFire*.

B. The Allegations in This Case Were Complex and Unique

9. Plaintiffs alleged in a 607 paragraph 152 page amended complaint (see Dkt. 127, the “SAC”) in this matter that Defendants violated ERISA in connection with three transactions: (1) a Recapitalization in late 2013 of MS Companies, Inc. to a limited liability corporation (the “2013 Recapitalization”); (2) the payment of excessive compensation to executives, including the distribution of Class B and Class C Units of MS Companies, LLC from 2013–2017, thereby diluting the value of the Plan (the “Compensation Decisions”); and (3) the purchase of all the shares of MS Capital stock held by the Plan at a below fair market price of \$187 for a total of consideration of \$16,493,664, which consisted of 80,094.3643 shares for \$14,977,646 in cash and 8,107.0476 shares worth \$1,516,018 transferred to MS Capital in payment of an outstanding loan from the company to the ESOP (the “2017 Transaction”).

10. The Class Representatives, Gregory Godfrey, Jeffrey Sheldon, and Debra Kopinski could not afford to pursue litigation against the well-funded Defendants in this action on any basis other than a contingent fee. Accordingly, the contingency fee agreements entered into between my firm and Mr. Godfrey, Mr. Sheldon, and Ms. Kopinski provide for Class Counsel to advance costs of the litigation and receive attorney fees of one-third of any recovery plus expenses.

11. Based upon my 15 years of experience in litigating ERISA breach of fiduciary and prohibited transaction matters, ERISA breach of fiduciary class actions involve tremendous risk, require finding and obtaining opinions from expensive, unconflicted, consulting and testifying experts in finance, investment management, fiduciary practices, and related fields, and are

extremely hard fought and well defended. And in the context of ERISA breach of fiduciary actions this case was uniquely complex and involved novel and untested allegations associated with three separate complex ESOP transactions. I understand that ERISA litigation involves a national market, because the number of plaintiff's firms who have the necessary expertise and are willing to take the risk and devote the resources to litigate complex ERISA fiduciary breach claims is small. Within this small market of firms, in my experience there is even a smaller amount of law firms that would have the expertise and resources to bring a case such as this one, given the complexity and resources necessary to do so.

12. Plaintiffs' counsel has always been confident in their chances of success in this matter. Nevertheless, this was an enormously high stakes litigation considering Plaintiffs prosecuted this case on a contingency basis, Plaintiffs' counsel dedicating tremendous resources to this case, Defendants would likely appeal any negative decision and/or judgment and Plaintiffs ran the risk of non-payment. As further described in Plaintiffs' Motion for Attorney Fees, Costs, and a Case Contribution Award, I believe this level of stakes and risk is supportive of Plaintiffs' fee request for one-third of the total \$16.5 million recovery in this action in conformity with Seventh Circuit case law.

13. As discussed below and in the declaration of Mark G. Boyko ("Boyko Decl.") submitted to the Court contemporaneously, because of this level of risk and the complexity of the allegations of wrongdoing, Class Counsel dedicated substantial resources to this litigation, including thousands of hours of attorney time and the retention of sophisticated experts.

C. Summary of Time and Expenses of WLG Attorneys

14. The below summary of WLG time and expenses ("WLG Lodestar") was taken from a computer-based contemporaneous timekeeping program WLG maintains, as part of its internal

administration and recordkeeping procedures in which. WLG attorneys enter their time on a daily basis with the time tracked in no greater than six-minute intervals.

15. The total lodestar of Class Counsel is set forth in the Boyko Decl. The WLG Lodestar is summarized below. WLG's fee summaries show the time spend on specific categories of work necessary to prosecute this litigation. Given the market where Class Counsel litigated the case and the skills and experience required to litigate, WLG is using the following rates in determining the WLG Lodestar.

Total WLG Lodestar Through 7/31/2022

Name	Title	Years of Experience	Hours	Rate	Lodestar
Thomas E. Clark	Partner	14	2509.3	\$725	\$1,819,242.50
Roberta Watson	Partner	44	18.8	\$850	\$15,980.00
Jon Schultze	Partner	18	13.8	\$850	\$11,730.00
Dan Brandenburg	Partner	49	9.2	\$850	\$7,820.00
Dannae Delano	Partner	22	7.0	\$725	\$5,075.00
David Gabor	Partner	36	5.7	\$625	\$3,562.50
Jordan D. Mamorsky	Of Counsel	12	1543.1	\$695	\$1,072,454.50
Barry Salkin	Of Counsel	47	13.7	\$850	\$11,645.00
Katherine Brustowicz	Associate	5	24.8	\$495	\$12,276.00
Totals			4,145.4		\$2,959,785.50

D. WLG's Hourly Rates Are Reasonable

16. WLG's hourly rates are reasonable and appropriate for a sophisticated lawsuit of this kind. ERISA class actions are a national practice operating exclusively in federal courts throughout the country. In setting these rates, our firm is cognizant of the rates approved in other ERISA class action cases (as set forth in our accompanying Memorandum of Law), as well as the rates charged by the defense bar in this field. Included in paragraph 26 to the Boyko Decl. are

excerpts of a report (the “Valeo Report”) showing comparable 2021 market rates to be significantly higher than WLG’s rates and that the market rates for such work increases on a yearly basis.

E. Expenses

17. As lead attorney for WLG, I personally managed, delegated, and supervised the allocation of personnel and expenses employed by my firm in this case. WLG attorneys at all times have aggressively and vigorously prosecuted this case and represented the best interests of the Plaintiffs and the participants and beneficiaries of the Plan. Over the course of the litigation, we incurred \$437,512.40 in expenses. Along with those expenses paid by Bailey & Glasser, Class Counsel incurred \$954,069.47 in expenses. Paragraph 33 of the Boyko Decl. provides a breakdown of the total expenses.

18. WLG’s depth of experience with ESOP and ERISA claims and class action litigation allowed Plaintiffs’ counsel to pursue the case and negotiate a settlement that capitalized on the claims’ strengths while taking into account the risks of continued litigation.

19. In my opinion, the time expended, and expenses incurred in prosecuting this action, were reasonable and necessary for the diligent litigation and fair resolution of this matter.

I declare, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed at Boston, Massachusetts on. this 19th day of August 2022.

/s/ Thomas E. Clark

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

GREGORY GODFREY, et al.,

Plaintiffs,

v.

GREATBANC TRUST COMPANY, et al.,

Defendants.

Case No. 1:18-cv-07918

Judge Matthew F. Kennelly

Magistrate Judge Michael T. Mason

**[PROPOSED] FINAL JUDGMENT AND ORDER GRANTING PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF SETTLEMENT AND MOTION FOR
ATTORNEYS' FEES, COSTS, AND CASE CONTRIBUTION AWARDS**

Plaintiffs (or “Class Representatives”) have submitted a Motion for Final Approval of the Settlement set forth in the Class Action Settlement Agreement dated May 16, 2022 (the “Settlement Agreement”). Dkt. ___. Class Counsel has also submitted to the Court their Motion for Attorneys’ Fees, Costs and Case Contribution Awards. Dkt. ___.

On May 24, 2022, this Court granted preliminary approval to the proposed class action settlement set forth in the Settlement Agreement. Dkt. 311. This Court also approved the procedure for giving Class Notice to the members of the Settlement Class and set a Final Approval Hearing to take place on October 4, 2022. Dkt. 313. The Court finds that due and adequate notice was given to the Class.

The Court has reviewed the papers filed in support of the Motion for Final Approval of the Settlement and the Motion for Attorneys’ Fees, Costs, and Case Contribution Awards, including the Settlement Agreement and exhibits thereto, memoranda and arguments submitted on behalf of the Settlement Class, and supporting declarations.

On October 4, 2022, this Court held a duly noticed Final Approval Hearing to consider: (1) whether the terms and conditions of the Settlement Agreement are fair, reasonable and adequate; (2) whether a judgment should be entered dismissing the Class Members' Released Claims on the merits and with prejudice; and (3) whether and in what amount to award attorneys' fees and expenses to Class Counsel and any award to the Plaintiffs for their representation of the Settlement Class.

Based on the papers filed with the Court and the presentations made to the Court by the Parties and by other interested persons at the Final Approval Hearing, it appears to the Court that the Settlement Agreement is fair, adequate, and reasonable, and in the best interests of the Settlement Class.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. **Definitions.** This Judgment incorporates by reference the definitions in the Settlement Agreement. All capitalized terms not defined herein shall have the same meanings as in the Settlement Agreement.
2. **Jurisdiction.** This Court has jurisdiction over the subject matter of the Lawsuit and over all parties to the Lawsuit, including all Class Members, and venue in this Court is proper.
3. **No Merits Determination.** By entering this Order, the Court does not make any determination as to the merits of this case.
4. **Settlement Class.** Pursuant to Rule 23 of the Federal Rules of Civil Procedure, this Court hereby certifies this Lawsuit as a class action, with the Settlement Class defined as:

All participants in the McBride & Son Employee Stock Ownership Plan, and the beneficiaries of such participants, at any time

between December 31, 2013 and December 15, 2017. Excluded from the Settlement Class are (1) Defendants Eilermann and Arri, their immediate families, and their legal representatives, successors, and assigns, and (2) any owners of Class B and Class C Units of McBride & Son Companies, LLC ("MS Companies, LLC") during the class period including Jeffrey Berger, Jeffrey Schindler, and Jeffrey Todt.

5. **Designation of Class Representatives and Class Counsel.** The Court confirms the prior appointments of Plaintiffs Gregory Godfrey ("Godfrey"), Jeffery Sheldon ("Sheldon"), and Debra Ann Kopinski ("Kopinski") as Class Representatives, and attorneys at the law firms of Bailey & Glasser LLP and The Wagner Law Group, PC as Class Counsel.
6. **Settlement Approval.** Pursuant to Federal Rule of Civil Procedure 23(e), this Court hereby approves the Settlement and finds that it is, in all respects, fair, reasonable, and adequate to the Parties. The Court further finds that the Settlement is the result of good faith arm's length negotiations between experienced counsel representing the interests of the Parties. Accordingly, the Settlement is hereby approved in all respects, there is no just reason for delay, and the Parties are hereby directed to perform its terms.
7. **Dismissal with Prejudice.** Final Judgment is hereby entered with respect to the Released Claims of all Class Members, and the Released Claims are hereby dismissed in their entirety with prejudice and without costs, and the case shall be closed pursuant to Paragraph 20 of this Order.
8. **Releases and Covenants Not to Sue.** The releases and covenants not to sue set forth in Sections 3 and 4 of the Settlement Agreement (Dkt. 308-1) are expressly incorporated herein in all respects and made effective by operation of this judgment.

The Court hereby approves these provisions as contained and incorporated in Sections 3 and of the Settlement Agreement.

9. **Approval of Class Notice.** The form and means of disseminating the Class Notice as provided for in the orders granting preliminary approval of class action settlement and proposed notice of settlement constituted the best notice practicable under the circumstances, including individual notice to all Settlement Class Members who could be identified through reasonable effort. Said Class Notice fully satisfied the requirements of Rule 23 and complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution.
10. **Attorneys' Fees and Expenses.** Plaintiffs and Class Counsel have moved for an award of attorneys' fees in the amount of \$5,500,000 and costs and expenses of \$954,069.47. The Court has considered this application separately from this Judgment. The Court finds that an award of \$5,500,000 in attorneys' fees, and \$954,069.47 in costs and expenses is fair and reasonable, and the Court approves of Class Counsels' attorneys' fees, costs and expenses in these amounts to be paid from the Settlement Amount.
11. **Case Contribution Awards.** The Court further finds that Case Contribution Awards for Class Representatives Godfrey, Sheldon, and Kopinski in the amount of \$25,000 each is fair and reasonable, and the Court approves of the Case Contribution Awards in these amounts. The Court directs the Settlement Administrator to disburse \$25,000 each to Godfrey, Sheldon, and Kopinski from the Settlement Amount as provided in the Settlement Agreement.

12. **Use of Order.** Neither this Order, the fact that a settlement was reached and filed, the Settlement Agreement, nor any related negotiations, statements or proceedings shall be construed as, offered as, admitted as, received as, used as, or deemed to be an admission or concession of liability or wrongdoing whatsoever or breach of any duty on the part of any Party. This Order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Lawsuit. In no event shall this Order, the fact that a settlement was reached, the Settlement Agreement, or any of its provisions or any negotiations, statements, or proceedings relating to it in any way be used, offered, admitted, or referred to in the Lawsuit, in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding, by any person or entity, except by the Parties and only the Parties in a proceeding to enforce the Settlement Agreement.
13. **Continuing Jurisdiction.** Without affecting the finality of this Judgment in any way, this Court hereby retains continuing jurisdiction over the administration, consummation, enforcement, and interpretation of the Settlement Agreement, the Final Judgment, and for any other necessary purpose, including to ensure compliance with the Protective Order.
14. **Termination of Settlement.** This Settlement Agreement may be terminated by any of the Parties if (i) the Court declines to approve the Settlement, or (ii) the Final Order entered by the Court is reversed or modified in any material respect by any Appeal Proceeding, provided that the terminating party, within fourteen (14) calendar days from the date of such event, furnishes written notice to Class Counsel or Defendants' counsel, as the case may be, of the termination of the Settlement,

specifying the terms modified or not approved that give rise to the right to terminate. If the Settlement Agreement is terminated, the following shall occur: (i) Class Counsel or Defendants' counsel shall promptly, after the date of termination of the Settlement Agreement, notify the Court and cause the return of any Settlement Amount to the Defendants, except for amounts disbursed or incurred pursuant to Section 8.1 of the Settlement Agreement; (ii) the Lawsuit shall for all purposes revert to its status as of the day immediately before April 18, 2022, and the Parties shall promptly request a scheduling conference with the Court; and (iii) the Settlement shall be deemed void and of no further force and effect.

15. **Implementation of the Agreement.** The Parties are hereby authorized to implement the terms of the Settlement Agreement.
16. **Reasonable Extensions.** If consistent with Section 11.8 of the Settlement Agreement, without further order of this Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of the Settlement Agreement.
17. **CAFA Notice.** Defendants have provided notification to all appropriate federal and state officials regarding the Settlement as required by 28 U.S.C. § 1715.
18. **Entry of Final Judgment.** There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is hereby directed.
19. **Lawsuit Closed.** The Clerk of the Court is hereby directed to close the Lawsuit.

Dated: _____

Signed: _____