

GreatBanc, Homebuilder Strike \$16.5M Deal To End ESOP Suit

By **Patrick Hoff**

Law360 (May 17, 2022, 2:41 PM EDT) -- A Missouri-based homebuilder and employee stock ownership plan trustee GreatBanc Trust have struck a \$16.5 million deal to end a class action from ex-workers who said the homebuilder raided the plan to line the pockets of two executives.

The workers in a [motion](#) Monday asked the court to grant preliminary approval to the settlement, which would end claims that [McBride & Son Homes](#) worked with GreatBanc Trust Co. on a series of transactions between 2013 and 2017 that violated the Employee Retirement Income Security Act.

"The immediate and certain payment of \$16.5 million to the class outweighs the uncertain possibility of a greater amount in the future, particularly given the amount of time it would take ... for any judgment to be reduced to actual payment to the members of the class," according to the motion.

The employees asked that nearly \$6.5 million of the settlement go to class counsel — \$5.5 million for attorney fees and \$979,000 for expenses — and each of the three named plaintiffs receive a \$25,000 service award. The remaining balance of the settlement fund would be split between class members based on their stake in the ESOP.

U.S. District Judge Matthew Kennelly in February 2021 [certified a class](#) that includes all participants in the McBride & Son ESOP and their beneficiaries at any time between March 29, 2013, and Dec. 15, 2017.

The workers originally [sued in November 2018](#) alleging that GreatBanc worked with McBride CEO John F. Eilermann and Chief Financial Officer Michael D. Arri to reorganize the ESOP so that it no longer held shares directly in McBride. According to the complaint, the plan instead held a certain class of "units" in McBride after it was converted from an S corporation into a limited liability company.

The conversion also gave the two executives a greater stake in the company through different classes of units and higher payouts than available under the employee units, causing the value of employee units to fall over time, according to the suit.

The claims primarily center on two transactions: the reorganizing of the ESOP in 2013, and a redemption of all the outstanding shares of common stock held by the plan in November 2017 at \$187 per share, a price the class contends was below fair market value.

The employees said in their motion Monday that McBride and GreatBanc deny all allegations and do not

admit wrongdoing of any kind.

McBride, GreatBanc and the employees worked with mediator Robert A. Meyer of JAMS to reach the settlement, according to the motion. Counsel for the parties first met in July but were unable to reach an agreement, the employees said.

After the workers and both companies filed motions for summary judgment, the parties met for another all-day virtual mediation session on April 7, with a settlement reached later that month, according to the motion.

Counsel for the employees declined to comment.

Representatives of GreatBanc Trust Co. and McBride & Son did not immediately respond to requests for comment Tuesday.

The employees are represented by Mark G. Boyko, Patrick O. Muench, Ryan T. Jenny and Gregory Y. Porter of Bailey & Glasser LLP and Thomas E. Clark Jr. and Jordan D. Mamorsky of The Wagner Law Group PC.

GreatBanc Trust Co. is represented by Michael L. Scheier, Brian P. Muething, Jacob D. Rhode and Ross D. Taylor of Keating Muething & Klekamp PLL.

McBride & Son, Eilermann and Arri are represented by Lars C. Golumbic, Sarah M. Adams, Shaun A. Gates and Rachael Hancock of Groom Law Group Chtd. and Daniel Broderick Jr. of Cassiday Schade LLP.

The case is Godfrey et al. v. GreatBanc Trust Co. et al., case number 1:18-cv-07918, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Celeste Bott. Editing by Neil Cohen.