

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION**

Roger A. Herndon, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

Huntington Ingalls Industries, Inc., the HII
Administrative Committee, and John/Jane Does 1–5,

Defendants.

Civil Action No.: 4:19-cv-00052-RCY-
LRL

CLASS ACTION

Declaration of Gregory Y. Porter

EXHIBIT A

ERISA, Employee Benefits & Trust Litigation

Bailey Glasser handles class actions and high stakes individual actions involving employee pension benefits—including employee stock ownership plans (ESOPs), 401(k) plans and other defined contribution or individual account plans, and traditional defined benefit pension plans—and trust litigation involving family and other private trusts. We litigate these actions throughout the United States under the federal employee benefits law known as the Employee Retirement Income Security Act (ERISA) and under state trust law.

Our clients include employees, former employees, retirees, and trust beneficiaries, as well as businesses and other professionals victimized by fraud, investment mismanagement, hidden and undisclosed fees, and illegal benefit cutbacks. We have recovered hundreds of millions of dollars for our clients in litigation claiming breaches of fiduciary duty, prohibited transactions, and other violations of the law. Our fiduciary duty practice also includes claims in the growing area of ERISA welfare benefit plan litigation, such as claims challenging systematic denials of treatments under medical plans under policies that violate ERISA.

ESOPs

Bailey Glasser focuses on ESOPs that invest in private companies. Federal pension law provides generous tax subsidies to shareholders and companies that sell their stock to an ESOP. In exchange for these tax benefits, federal law requires that an independent trustee decides whether the stock transaction should happen. Independent trustees are supposed to act like a hypothetical prudent buyer in the market for a private company. Unfortunately, in our experience, these trustees do not conduct adequate due diligence, do not have a sophisticated understanding of corporate transactions, and are more interested in collecting trustee fees paid by the employer than doing their job.

The US Department of Labor has long identified ESOPs as an enforcement priority due to rampant abuses by plan service providers, and the firm has worked closely with the DOL on lawsuits. Bailey Glasser's ESOP practice strives to obtain real money for our clients and create real changes in the industry.

Multi-Trust Class Actions

Bailey Glasser's ERISA team has deep experience with complex, multi-plan class actions involving esoteric trading practices and opaque financial products. We represented hundreds of retirement plans in class actions against major financial institutions engaged in conflicted and imprudent securities lending practices that cost the plans millions. In one such case, against Northern Trust Company in Chicago federal court, we recovered \$36 million for our clients. We also successfully prosecuted a

complex, unlawful tax-fee against BNY Mellon on behalf of thousands of family trusts, ultimately recovering millions for our clients. Currently, we are prosecuting an ERISA class action against Intel Corp. involving poor performing hedge funds and private equity investments.

401(k) Plans

Bailey Glasser has a long history of representing employees and retirees harmed by hidden or excessive fees, or imprudent investments, in their 401(k) plans. Our experienced team understands the various ways financial-services companies can profit from workers' hard-earned retirement savings. We have successfully litigated at all levels, including the United States Supreme Court, recovered over \$100 million on behalf of our clients, and provided meaningful improvements to retirement plans across the country.

Pension Plans

Our team represents plan participants and beneficiaries in claiming the benefits that they were promised, and earned, under the written terms of their pension plans. In addition, plan sponsors are prohibited by law from amending qualified plans to decrease participants' "accrued benefits" and from eliminating or reducing certain "protected benefits." We have attorneys experienced in "anti-cutback rule" litigation. Bailey Glasser has recently been spearheading litigation alleging that actuarial assumptions used to determine optional forms of benefits or early retirement benefits are outdated. We are seeking losses to participants caused by use of outdated actuarial assumptions that cause benefits to be paid that are not actuarially equivalent to the annual monthly benefit (typically expressed as a single life annuity) payable at normal retirement age.

Trust Litigation

We understand how trustees, money managers, and investment advisors operate, and know how to spot hidden fees and mismanagement. Bailey Glasser recently finalized a nationwide class action on behalf of private family trusts who were being charged hidden fees by a large bank.

Health and Medical Plans

Our team members collectively have decades of experience in ERISA fiduciary duty litigation. We represent participants and beneficiaries in health care and medical plans to challenge systematic denials of treatments under policies that violate ERISA, and violations of mental health parity law.

Active Cases

Urschel Laboratories Employee Stock Ownership Plan

Experience

Making the Law

- Won a unanimous decision in the United States Supreme Court in *Sulyma v. Intel Corp*, a case brought on behalf of participants in Intel's 401(k) plan concerning alleged imprudent investments in several of the Plan's investment options. The Supreme Court decision set new standards for ERISA's statute of limitations.
- Won a \$30 million trial judgment in *Brundle v. Wilmington Trust*, a case involving multiple breaches of duty by the trustee and complex valuation issues in an ESOP transaction; won a complete affirmance by the US Court of Appeals for the Fourth Circuit, establishing new law on ESOPs that has been cited nationwide.
- Obtained a precedent-setting decision by the US Court of Appeals for the Seventh Circuit in *Allen v. GreatBanc Trust Co.*, which established important pleading standards in ESOP cases.
- Obtained groundbreaking order that ESOP-owned company's indemnification of ESOP trustee violated ERISA in *McMaken v. Chemonics*.

ESOPs

- Won a \$30 million trial judgment in *Brundle v. Wilmington Trust*, a case involving multiple breaches of duty by the trustee and complex valuation issues in an ESOP transaction; won a complete affirmance by the US Court of Appeals for the Fourth Circuit, establishing new law on ESOPs that has been cited nationwide.
- Settled an ESOP lawsuit for \$19.5 million, in *Jessop v. Larsen*, working closely with the US Department of Labor; yielded an average class member recovery of over \$30,000
- Recovered \$19.5 million for ESOP participants just before trial. *Choate v. Wilmington Trust*
- Recovered \$12 million for ESOP participants after one-week trial. *Nistra v. Reliance Trust*
- Recovered \$6.25 million for ESOP participants. *Casey v. Reliance Trust*
- Recovered \$5 million for ESOP participants even though plaintiffs had signed releases. *Fiorito v. Wilmington Trust*.

401(k) Plans

- Recovered \$17 million for plan participants from Neuberger Berman in case alleging imprudent investment in proprietary fund. *Bekker v. Neuberger*
- Settled a lawsuit against Franklin Templeton for \$26 million where the plaintiffs alleged that Franklin Templeton stuffed its own employee 401(k) plan with Franklin Templeton mutual funds despite a conflict of interest. *Cryer v. Franklin*

- Settled a lawsuit against Fidelity Investments for \$12 million where the plaintiffs alleged that Fidelity stuffed its own employee 401(k) plan with Fidelity mutual funds. *Bilewicz v. Fidelity*.

Multi-Trust Financial Class Actions

- Secured a \$59.2 million settlement on behalf of participants in certain Raytheon Co. pension plans based on allegations Raytheon used outdated mortality tables to calculate plan benefits.
- Settled a complex securities lending action for \$36 million against Northern Trust on behalf of hundreds of retirement plans across the country. *Diebold v. Northern Trust*
- Obtained class certification of hundreds of retirement plans in complex securities lending that settled for \$10 million. *Glass Dimensions v. State Street*
- Settled a multi-state class action against BNY Mellon for \$10 million on behalf of hundreds of private family trusts who had been charged hidden fees. *Henderson v. BNY Mellon*
- Prosecuting multi-plan class action alleging imprudent investments in hedge funds and private equity that cost plans billions of dollars. Won groundbreaking case in Supreme Court that allowed case to proceed. *Sulyma v. Intel Corp.*



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“This is a wonderful result for your clients and for everyone, and I appreciate it. It is really wonderful when a judge has such fine lawyers in front of her. Throughout this case ...the quality of the work for all the parties has really been extraordinarily good...Congratulations to all of you for the fine work.”

Greg Porter has extensive trial and class action experience in complex pension, 401(k) plan, and employee stock ownership plan (ESOPs) lawsuits in federal court. Greg has led the firm’s ERISA and trust practice to major trial and appellate victories, including seminal decisions in the Seventh and Fourth Circuit Courts of Appeal and a \$30 million trial judgment that broke new ground for ESOPs. With co-counsel, the firm’s ERISA practice won a 9-0 decision in the Supreme Court, *Intel Corp v. Sulyma*, that established key statute of limitations rights for employees in ERISA cases.

Greg has recovered hundreds of millions of dollars on behalf of employees who lost retirement savings in 401(k) plans and ESOPs. He understands complex financial transactions, investments, and instruments.

Greg has also developed techniques for successfully investigating and prosecuting complex lawsuits involving business valuation, securities lending, hedge funds, and private equity. He is a skilled appellate advocate who has argued appeals in the Second, Fourth, Sixth and Eighth US Circuit Courts of Appeal.

Government Service / Previous Employment

United States Army, Infantry Branch

Executive Director, National Organization for the Reform of Marijuana Laws (NORML)

Practice Areas

Appellate Advocacy
Business Valuation
Cannabis Law
Class Actions
Commercial Litigation
ERISA, Employee Benefits & Trust Litigation
Labor & Employment

Education

J.D., University of Southern California Gould *School of Law*, 1996, Order of the Coif, Articles Editor, *Southern California Law Review*, Paralyzed Veterans of America Scholarship - Teaching and Research Assistant

B.A., University of Massachusetts Amherst, 1989, Winning History Department Essay (1988)

Admissions

District of Columbia
New York
Virginia
US Supreme Court
US Court of Appeals for the First Circuit
US Court of Appeals for the Second Circuit
US Court of Appeals for the Third Circuit
US Court of Appeals for the Fourth Circuit
US Court of Appeals for the Fifth Circuit
US Court of Appeals for the Sixth Circuit
US Court of Appeals for the Seventh Circuit
US Court of Appeals for the Eighth Circuit
US Court of Appeals for the Ninth Circuit
US District Court, District of Columbia
US District Court, Central District of Illinois
US District Court, Northern District of Ohio
US District Court, Eastern District of Virginia

Representative Matters

- Won a \$30 million trial judgment in *Brundle v. Wilmington Trust*, a case involving multiple breaches of duty by the trustee and complex valuation issues in an ESOP transaction; won a complete affirmance by the US Court of Appeals for the Fourth Circuit, establishing new law on ESOPs that has been cited nationwide
- Obtained a precedent-setting decision by the US Court of Appeals for the Seventh Circuit in *Allen v. GreatBanc Trust Co.*, which established important pleading standards in ESOP cases
- Settled an ESOP lawsuit for \$19.5 million, in *Jessop v. Larsen*, working closely with the US Department of Labor; yielded an average class member recovery of over \$30,000
- Settled a complex securities lending action for \$36 million against Northern Trust on behalf of hundreds of retirement plans across the country
- Settled a lawsuit against Franklin Templeton for \$26 million where the plaintiffs alleged that Franklin Templeton stuffed its own employee 401(k) plan with Franklin Templeton mutual funds despite a conflict of interest
- Settled a lawsuit against Neuberger Berman for \$17 million where the plaintiffs alleged that Neuberger pushed a low-performing and expensive proprietary mutual fund on its own employee 401(k) plan despite a conflict of interest
- Represents Intel employees in *Sulyma v. Intel Corp.*, a case claiming that retirement plan trustees lost substantial retirement savings by investing in hedge funds and private equity. In February 2020, the Supreme Court issued a unanimous decision in favor of our clients, the employees, on a key the statute of limitations defense
- Represents employees in multiple pension plan lawsuits claiming that employers used outdated mortality tables, some 50 years old, to improperly calculate pension benefits
- Represents employees in multiple ESOP lawsuits claiming that trustees caused employees to pay more than fair market value for employer stock
- Won a trial on behalf of the defendant in *Dupree v. Prudential Insurance Company*, where the plaintiffs alleged hundreds of millions of dollars in pension losses

Community and Professional Activities

Employee Benefits Committee, American Bar Association's Labor and Employment Section, Member



Partner

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Mark Boyko practices primarily in the area of complex fiduciary breach and prohibited transaction litigation, representing clients in actions brought under the Employee Retirement Income Security Act of 1974 (ERISA). He has secured judgments and settlements in this area exceeding \$350 million and handled successful appeals in federal circuit courts as well as the US Supreme Court.

Mark is a pioneer in ERISA class action litigation, representing workers and retirees in many of the earliest cases in his field. In these matters, Mark represents 401(k) plan participants alleging breach of fiduciary duties in order to hold employers and Wall Street accountable for the plans' investments and fees.

His practice also includes numerous private company ESOP cases in which he represents workers claiming that fiduciary trustees caused their employee stock ownership plans (ESOPs) to overpay corporate insiders for private company stock. Additionally, Mark represents pension plan participants in cases alleging that plans using decades-old mortality tables have unfairly reduced monthly benefits for married retirees.

Mark also provides legal and strategic services to founders, startups, and small businesses from pre-conception through Series-A funding.

Awards & Accolades

Super Lawyers, Missouri, "Rising Star," Class Action/Mass Torts, Employee Benefits, Business/Corporate, Personal Injury - General (2020)

Practice Areas

Arbitration & Dispute Resolution

Business & Finance

ERISA, Employee Benefits & Trust Litigation

Life Sciences

Private & Family Businesses

Education

LL.M., New York University School of Law, 2005

J.D., University of Missouri - School of Law, 2004

B.A., University of Illinois at Urbana–Champaign, 2001

Admissions

Missouri

Illinois

New York

Representative Matters

- Represents employees and 401(k) plan participants in litigation alleging employers used their own expensive proprietary investment products in the plans because of the benefit to the employer
- Represents retirees and defined benefit pension plan participants in litigation against employers such as American Airlines and Anheuser Busch concerning the actuarial calculations the plans use to calculate pension benefits
- Represents current and former employees in litigation alleging that the purchase or sale of privately held stock by an Employee Stock Ownership Plan (ESOP) was not at market prices and instead done to benefit the corporate founders or insiders
- Represents workers and retirees alleging their employer imprudently concentrated their 401(k) plan investments in single stocks or a small number of stocks
- Represents Embark Veterinary, Inc., a canine genetic testing company, on corporate matters from company origin
- Represents startups in diverse fields including medical monitoring and YouTube/entertainment

Community and Professional Activities

Board Member, Places for People

Director, Kirkwood R-VII School District

St. Louis County Economic Rescue Team

Vice-Chair, Employee Benefits General Committee, American Bar Association's Torts, Trial, and Insurance Practice Section (2020-21)

Former professional soccer referee



Partner

Katherine E. Charonko

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Kate Charonko is a thought leader and pioneer in the field of Electronically Stored Information (ESI) and is Bailey Glasser's ESI group's Practice Group Leader. Kate is a Certified e-Discovery Specialist (CEDS), which is a globally-recognized credential that assures clients and co-counsel that our approaches are efficient, cost-effective, and reduces risk in all phases of e-Discovery.

The strategic use of ESI – and the timing related to when ESI strategies are deployed in pending or threatened litigation – can greatly impact the flow and cost of legal proceedings.

In her role as ESI Practice Group Leader, Kate designs ESI strategies that provide structured and conceptual analytic functionality for numerous aspects of e-Discovery, including document review strategy, use of technology and technology assisted review (TAR), collection and preservation strategy, ESI protocols, and training and implementation of e-Discovery practices.

Kate also provides consulting services for all Bailey Glasser e-Discovery case managers and attorney case teams to drive analytics adoption at the firm, resulting in significant time and cost savings to clients.

In addition to her e-Discovery practice, Kate serves as part of Bailey Glasser's multidistrict litigation (MDL) teams focusing on automotive and medical device product liability actions across the country. She was appointed to serve as liaison director of e-Discovery and ESI on several MDL leadership committees and creates case-specific document review workflows.

Kate frequently speaks on various e-Discovery topics, including ESI, TAR, and legal ethics. In 2019, she was invited to share her "lessons learned" about her path to becoming a lawyer in Nora Riva Bergman's book, *"50 Lessons for Women Lawyers From Women Lawyers."*

Awards & Accolades

Certified E-Discovery Specialist (CEDS)

Best Lawyers, Spring 2021, Women in the Law

Government Service / Previous Employment

Extern, Hon. Irene M. Keeley, US District Court for the Northern District of West Virginia (2011)

Practice Areas

Automotive

Catastrophic Personal Injury

Electronically Stored Information (ESI)

Life Sciences

MDL Panels

Medical Device & Drugs

Product Liability

Education

J.D., West Virginia University College of Law, 2011, Order of the Barrister, Winner 2011 Marilyn E. Lugar Trial Competition

B.F.A., West Virginia University, 2007, *summa cum laude*, Outstanding Senior Award

Admissions

West Virginia

District of Columbia

US District Court, Northern District of West Virginia

US District Court, Southern District of West Virginia

US District Court, Northern District of Illinois

Representative Matters

- Appointed to serve on the leadership team for the Discovery & ESI Subcommittee in a multidistrict class-action litigation in the defective 3M combat arms earplugs case
- Serving as liaison director of e-Discovery to several MDL leadership committees in various cases focusing on medical device product liability claims surrounding manufactured hernia mesh products, including working with the plaintiffs' executive committee in Atrium Medical Corp. C-Qur Mesh Products Liability Litigation (MDL No. 2753)
- Kate was appointed by the Plaintiffs' Steering Committee to be the Liaison Director for e-Discovery for *In re Davol/C.R. Bard Hernia Mesh*; this litigation is coordinated in Rhode Island state court and targets Bard's Composix® Kugel® mesh patches, and raise safety concerns about the company's other hernia repair products, including Composix, Composix E/X, Ventrion, Ventrion ST, Ventralex, Ventralex ST, 3D Max, Perfix Plug, Marlex, and Bard Mesh

- Serves as a member of the bellwether trial team for the Atrium Medical Corp. C-Qur Mesh Products and *In re Davol/C.R. Bard Hernia Mesh*
- Participating as a member of Bailey Glasser's plaintiff steering committee team on the Volkswagen Diesel Emissions MDL in the Northern District of California, the largest automotive class action in history, with settlements predicted to exceed \$10 billion
- Serving as part of the team working with the plaintiffs' lead counsel committee for the economic loss cases in the Toyota sudden acceleration MDL in the Middle District of California, which settled for \$1.6 billion and handled more than a dozen related death and serious injury cases

Community and Professional Activities

American Association of Justice

The Sedona Conference

Women In E-Discovery

Women En Mass

International Legal Technology Association



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Alex Serber lives and breathes the tax code. Alex dedicates her uniquely broad tax practice to providing strategic and pro-active counsel to her clients, including advocacy and resolution of tax controversies, structuring transactions, entity choice and formation, mergers and acquisitions, financial restructurings, and bankruptcies/reorganizations. For non-profit organizations, she also deftly guides her clients through strategic compliance, operational advice, and other complicated tax matters. In short, Alex uses her passion for tax law to benefit her corporate and individual clients.

In addition, Alex finds ways to help clients take advantage of new and noteworthy changes in tax laws that can be financially advantageous, such as the complex structuring of Qualified Opportunity Zone Funds or structuring multi-tiered entities to maximize tax advantages. She counsels companies on qualifying and selecting the most appropriate Federal and State tax credits. Alex takes a proactive approach in structuring deals to minimize tax implications for companies as well as assisting clients when the IRS, DOJ, or State authorities believe there are tax issues.

Alex also assists her clients as she views their circumstances not only through the lens of a tax attorney, but also as a litigator, where she handles multimillion-dollar litigation matters for diverse clients, including governmental entities and private class action plaintiffs.

Government Service / Previous Employment

Extern, Chief Counsel, Internal Revenue Service (2016)

Extern, Missouri Supreme Court (2015)

Practice Areas

Business & Finance

Cannabis Law

Criminal Defense & Internal Investigations

Hospitality and Franchising

Life Sciences

Mergers & Acquisitions

Name, Image, & Likeness (NIL)

Tax

Education

L.L.M. Taxation, Georgetown University Law Center, 2019

J.D., University of Missouri - School of Law, 2017, Founding Editor-In-Chief, *Business, Entrepreneurship & Tax Law Review*

B.A., Liberty University, 2014, *magna cum laude*

Admissions

District of Columbia

Maryland

Missouri

US Tax Court

Missouri Supreme Court

Representative Matters

- Advised gaming enterprises on tax structure opportunities and possible use of New Market Tax Credits and Opportunity Zone enhanced financing
- Structured and executed a Qualified Opportunity Zone project in West Virginia
- Advised non-profits entities on federal and state tax compliance and evaluation of unrelated business taxable income
- Advised clients on tax implications of domestic and international M&A transactions
- Consistently advise employees on prospective 409A pitfalls regarding their executive compensation agreements
- Serve as tax counsel to international gaming company
- Advised digital guarantee company of state tax compliance in 10+ states
- Represented client in Department of Justice (DOJ) Investigation in connection with conservation easements

Community and Professional Activities

Co-Chair, Women and Finance Committee, Women's Bar Association of the District of Columbia