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Pension Ruling Faults Bank

Fleet Discriminated Against Older Workers, Judge Says

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A federal judge in Bridgeport has ruled that the former Fleet Bank illegally discriminated against older workers when it adopted a hybrid pension plan nine years ago, a decision that the plaintiff's attorney said could eventually mean millions of dollars in damages for thousands of employees.

Based on what has happened at other companies, the ruling could also prompt Bank of America, which purchased Fleet two years ago, to end its defined-contribution plan in favor of some type of matching program that could result in even smaller payouts to veteran employees.

The suit against Fleet - now Bank of America - has been granted class-action status, meaning it will apply to about 25,000 workers.

A Bank of America spokeswoman said late Tuesday that the bank will continue to defend the lawsuit, but was pleased that the court had narrowed its scope by dismissing some allegations, including breach of fiduciary responsibility. The bank would not say whether it would appeal.

The lawsuit mirrors a high-profile case involving IBM, which was also sued after moving employees from a traditional pension plan to a cash-balance plan that allows workers to take funds with them if they leave the company, but does not guarantee fixed payments upon retirement.

As at IBM, some older workers at Fleet complained that the cash-balance plans reduced their expected pension benefits.

After the lower courts sided with IBM workers, the company eventually froze pension plans for all of its workers as of 2008. Instead, it will enhance its 401(k) benefits for its U.S. workforce.

Many other companies that have switched from traditional pension plans to hybrid plans have also frozen their pensions because of the legal questions the IBM case raised.

Thomas Moukawsher, the Hartford lawyer who represents the plaintiff in the

found the cash-balance plans discriminate against older workers.

"It looked for a while that the courts were going to paper over what's a clear violation of the law," Moukawsher said.

Asked if he was concerned that Bank of America would freeze employee pensions altogether, Moukawsher said, "They can do anything they want. But if they want to be fair and honest with their employees, they will remedy and rectify this situation and not simply lash out blindly at them."

The lawsuit against Fleet was filed in late 2004 by Donna C. Richards, who still works in the Hartford area for Bank of America as an executive vice president in trusts and estates. She first joined a Fleet predecessor bank, Hartford National, in 1973.

Richards alleged in the lawsuit that an employee who had participated in the traditional plan and then was switched to the cash-balance plan would, on retirement, only receive the benefit of the plan that had built up more assets - the traditional plan, frozen on Jan. 1, 1997, or the cash-balance plan.

In a 52-page decision, Judge Janet C. Hall sided with Richards on the age issue.

"She alleges that `an older worker with the same rate of pay and years of service as a younger worker, receiving the same dollar amount of contribution to her cash-balance plan account buys an increasingly smaller age-65 pension annuity with that money because the closer the older worker gets to retirement age, the less time the money contributed has to earn annual interest credits under the plan,'" the decision stated.

IBM is still appealing the lower-court decision to the U.S. Court of Appeals for the Seventh Circuit in Chicago. IBM has agreed to pay \$1.4 billion if it is unsuccessful.

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