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Judge allows lawsuit against Fleet Bank

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NEW YORK -- An employee of the former Fleet Bank can move ahead with a lawsuit accusing her company of discriminating against thousands of older workers when it switched to a new type of pension plan, a federal judge has ruled.

The preliminary ruling by U.S. District Judge Janet Hall in Bridgeport, Conn., focuses on cash balance plans. Many large companies embraced cash balance as an alternative to traditional pensions in the late 1990s, before controversy erupted over whether the plans unfairly penalized workers with many years of experience.

A cash balance plan combines some aspects of a traditional pension plan with some trappings of a 401(k). Employers make a yearly contribution to a hypothetical individual "account." Workers are allowed to take the money with them if they leave for another job.

Hall's ruling, dated March 31 and entered Monday, will likely be closely scrutinized because the case against Fleet - now owned by Bank of America Corp. - largely echoes a widely publicized case against IBM Corp. In that case, IBM has agreed to settle for up to \$1.4 billion should it lose on appeal. Ironically, Bank of America is credited with creating the nation's first cash balance plan, back in 1985.

Hall ruled that Donna Richards, a 57-year-old executive with 33 years at the bank or its predecessors, can proceed with case alleging the company broke federal pension law by switching workers into a cash balance plan that reduced the rate at which older workers accrued retirement benefits.

The ruling also allows Richards' lawsuit to move forward as a class action, representing workers who believe they were similarly wronged. Richards' attorney said that 25,000 such older workers fall into that class, 10,000 of whom no longer work for the bank.

Fleet designed a plan that was so complex many of those workers might not realize they were short-changed, said Thomas Moukawsher, the Hartford attorney representing Richards.

"She (Richards) has three master's degrees and she couldn't figure out how this plan worked and that is one of the things about cash balance plans is that they're extremely difficult for people to figure out," Moukawsher said.

But a spokeswoman for Bank of America said the bank intends to defend itself against Richards' claims, and noted that the judge dismissed three counts of her lawsuit, even while allowing others to go forward.

"We believe that the Fleet Boston plan provides significant benefits to our associates and complies with applicable laws," the spokeswoman, Shirley Norton, said.