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HEADLINE: 18 SBC WORKERS SUE OVER SALE OF STOCK IN 401(K);
PENSIONS: EMPLOYEES ACCUSE COMPANY OF ILLEGALLY DISPOSING OF AIRTOUCH
SHARES AND USING PROCEEDS TO BUY ITS OWN.

BYLINE: INDRANEEL SUR, TIMES STAFF WRITER

BODY:

Eighteen California participants in SBC Communications Inc.'s 401(k) plan, mostly current and former Pacific Bell employees, sued the company Tuesday, accusing it of illegally selling AirTouch shares held in their retirement accounts and using the money to buy SBC shares without their consent.

The case is the latest dispute over 401(k) plans, a potential area of contention as workers invest more money in such plans and monitor those investments more closely, retirement law experts said.

Filed in federal district court in Los Angeles, the suit alleges that, by selling AirTouch shares and buying SBC shares in several transactions in 1998, SBC increased demand for its own stock, putting its interests ahead of its employees and violating the Employee Retirement Income Security Act, the federal law governing 401(k) and other pension plans.

The plaintiffs seek at least \$1.15 billion in damages-about \$ 29,000 per participant, which they say is the average investment gain they and nearly 40,000 fellow plan participants who held AirTouch would have earned if they had been allowed to keep their shares. AirTouch shares about tripled after the 401(k) sales, while SBC shares have stayed flat, the suit alleges. AirTouch was taken over by U.K.-based Vodafone in June.

The suit is among the largest ever brought for an alleged violation of ERISA since the law was passed in 1974. Plaintiffs seek class-action status.

SBC said it had not seen the suit and could not specifically comment on it. "No SBC savings plan includes direct stock ownership in any other company that is not related to SBC," the company said in a statement Tuesday. SBC provided several investment options to employees who had AirTouch shares, the statement said. "SBC did not profit from the conversion whatsoever."

Assets in 401(k) plans have surged in recent years, growing sixfold in the last 11 years. With more money at stake, workers are tracking their 401(k) investments more carefully, and are becoming quicker to second-guess plan decisions made by their employers, said Tom Foster, an ERISA attorney at Boston-based John Hancock Funds, which runs 401(k) plans for clients.

"In the past people were very complacent about retirement, but as the general populace of participants becomes more educated, you're going to see this starting to happen," Foster said of the litigation.

The case against SBC faces legal obstacles. Although there is little prior case law governing 401(k) investment choices, courts have given employers a margin for error in running the plans, said Roberta Ufford, principal at Groom Law Group, a Washington, D.C., employee benefits firm. "Employers are

supposed to make decisions based on current information, but they're not responsible for being able to see the future," she said. "They don't have a crystal ball."

Courts have also recognized that employers have a special interest in investing in their own shares, she said.

A similar case brought by a former Pacific Bell employee in December may be combined with the new one. Tuesday's filing seeks to represent a larger class of SBC workers, said Eli Gottesdiener, a Washington, D.C., lawyer for the new plaintiffs.

The plaintiffs in Tuesday's suit decided to keep shares of AirTouch in their retirement accounts when the wireless company was spun off from Pacific Bell in 1994. But the suit alleges that in 1998, a year after SBC acquired Pacific Bell, SBC executives quietly sold the AirTouch shares, held in two separate plans for salaried and nonsalaried workers. Funds from the sales were used to buy SBC stock, the suit says.

Many shares were sold just as AirTouch skyrocketed during a bidding war for it between Bell Atlantic Corp. and Vodafone, now called Vodafone AirTouch.

"Wireless has mushroomed from the phones ... to everything else," said plaintiff Larry Gottlieb, a service technician in Pacific Bell's Reseda office, in an interview. "Look at what I'm losing out on." He said he held 400 AirTouch shares in his 401(k) account before they were sold.

The transaction benefited SBC by increasing demand for the company's shares and giving workers a heavier stake in its well-being, the suit says. But when making decisions about the 401(k) accounts, SBC should have put the workers' financial interests first, the suit says.

"They made a fiduciary decision completely tainted by corporate business motivation," said Gottesdiener, the plaintiffs' lawyer. "I can certainly understand how they got all that confused, but it's a retirement plan. You can't use it for your company's benefit. It's conflict of interest in the extreme."

Shares of San Antonio-based SBC closed Tuesday at \$ 41.50, down 38 cents. The company reported 1999 net income of \$ 8.2 billion, up from \$ 7.7 billion the year before.

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