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HEADLINE: SBC Communications Sued By Workers on Stock Sale

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BODY:

California employees of SBC Communications, the nation's largest local telephone company, sued the company yesterday, accusing it of costing 45,000 employees and retirees $1.1 billion by selling shares of a lucrative investment that was in their company-controlled retirement accounts.

A group of 18 employees, retirees and spouses, who are seeking class-action status for their suit, accused the company of selling shares in AirTouch Communications from their 401(k) accounts after a series of mergers made AirTouch an SBC competitor.

The suit also accuses the company of giving out misleading information so that its California workers would not know about an unusual feature in their 401(k) plan that gave them the right to keep shares of AirTouch by rolling the shares into Individual Retirement Accounts while still at SBC. Typically, workers can move 401(k) funds to retirement accounts only if they leave their jobs.

SBC, in a statement, expressed confidence that it had acted lawfully at all times.

The suit is by far the largest in a growing number of cases involving possible conflicts between the self-interest of companies in how they invest their workers' retirement money and their duty under the Employee Retirement Income Security Act to operate the plans "solely in the interests of the participants and beneficiaries and for the exclusive purpose of providing benefits."

The case raises issues that can affect anyone whose employer gives them, or lets them buy, company shares and then spins off part of the company or is acquired by another concern.

The suit, filed in Federal District Court in Los Angeles by Eli Gottesdiener of the Sprenger & Lang law firm in Washington, D.C., centers on AirTouch, which was the wireless telephone division of Pacific Telesis until it was spun off in 1994. SBC employees received 11 million AirTouch shares in their 401(k) accounts as a stock dividend at the time and, to retain the shares, employees had to file statements saying they wanted to hold onto them.

When SBC acquired Pacific Telesis in 1997, the Pacific Telesis shares were converted to SBC shares, but the AirTouch shares were not affected. Subsequently, the suit charges, SBC decided to sell the AirTouch shares from the 401(k) accounts because the company competed with SBC's own cell phone businesses.

In interviews, several plaintiffs who do not know each other said that when they asked Gail Roberts, an SBC 401(k) plan administrator, to let them keep their shares she told them that SBC did not want its workers owning shares in a competing company. Ms. Roberts did not respond to voice mail messages yesterday.

The lead plaintiff in the case, Larry Gottlieb, 43, an installer for 20 years with Pacific Bell, said he had fought to keep his AirTouch shares because he was confident they would soar in value.

Mr. Gottlieb said Ms. Roberts never told him of the provision that would have let him keep his AirTouch shares, only that "SBC does not want a rival company's stock in their employees' 401(k) plan."

"I am very angry about this," said Mr. Gottlieb, who would have $45,000 more in his retirement plan if he still had his 560 AirTouch shares. "I told Gail Roberts that SBC had no right to take my AirTouch shares. They were mine and no one else's to fool around with as far as I am concerned."

Barry Resnick, 49, a psychologist in Orange, Calif, a plaintiff who is a beneficiary of his wife Adrienne's 401(k) account, said he, too, called Ms. Roberts and was told the AirTouch shares were being sold for competitive reasons.

"I said those are my wife's shares and you can't just sell them and Ms. Roberts said, 'Oh yes we can.'"

The lawsuit asserts that when SBC began selling the AirTouch shares, SBC management "knew or should have known" that their value would rise because Bell Atlantic and Vodaphone were competing to acquire AirTouch. Vodaphone won the bidding war and bought AirTouch last June for $60 billion in cash and stock.

The value of the AirTouch shares have tripled since they were sold by SBC, the lawsuit says. Hourly workers' AirTouch shares were replaced with SBC shares, which have since lost 16.6 percent of their value. Management workers, whose AirTouch shares were sold at a different time, have seen their SBC investment grow 9 percent.

Several pension law experts said that SBC would have a problem if the plaintiffs could prove it put corporate interests ahead of employees.

Not wanting workers to own stock in a competitor "is not a valid reason to force the sale of the AirTouch shares," said David West, coordinator of the employee benefits practice at Gibson Dunn & Crutcher, a Los Angeles law firm.

Norman Stein, a pension law professor at the University of Alabama law school, said, "If the company was making decisions based not on prudence but its business interests, they have a problem."

Both lawyers said they could conceive of valid reasons not to sell the workers' AirTouch shares, including an interest in having employees hold diversified investments.

In its statement, SBC said that it had not seen the lawsuit.

"However," the statement went on, "our position on this issue is very clear: no SBC savings plan includes direct stock ownership in any other company that is not related to SBC. After acquiring Pacific Telesis in 1997, SBC moved to bring the two companies' savings plans in line with one another. After lengthy internal review, including negotiations and agreement with our labor union, and after months of prior notice, SBC gave management and nonmanagement employees alike five different investment choices for converting their AirTouch funds. All the money from the liquidated AirTouch stock was reinvested dollar-for-dollar in these other vehicles and SBC did not profit from the conversion."

Jim Weitkamp, the Communications Workers of America district director in Los Angeles, could not be reached last night to comment on whether the union consented to the sale of the AirTouch shares.

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GRAPHIC: Photo: Larry Gottlieb, 43, an installer, said he had fought to keep his AirTouch shares because he was sure their value would soar, but said he was told SBC did not want a rival company's stock in workers' 401(k) plans. (Marissa Roth for The New York Times)