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Correction Appended

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HEADLINE: EMPLOYERS WATCHING RETIREMENT FUND CASE

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BODY:

First Union's partial win of a lawsuit claiming the company mishandled employees' 401(k) money - and the final outcome of the rest of the case - will be watched closely by other employers, a benefits expert says.

The suit, which appears to be one of the first of its kind, is important especially for banks that invest employees' 401(k) retirement money in funds the bank controls, said James Daniel, employee benefits attorney with Womble Carlyle Sandridge & Rice in Charlotte.

The suit was filed in May on behalf of nine former employees of Signet Banking Corp., which First Union bought in 1997.

In broad terms, the suit claims that First Union forced employees to "shop at the company store" by restricting their investment choices to funds the company controls, instead of also offering funds by competing companies, such as Vanguard or Fidelity, said Eli Gottesdiener, attorney with Washington D.C.-based Sprenger & Lang, which represents the plaintiffs. The company didn't act in the best interest of employees by doing so, Gottesdiener said.

Charlotte-headquartered First Union is "pleased but not surprised" that U.S. District Judge Richard Williams in Richmond ruled in the company's favor in several counts of the suit, a company spokeswoman said.

The judge ruled in First Union's favor on several points:

* The judge dismissed the claim that First Union didn't have the right to merge the Signet and First Union 401(k) plans.

* The suit claimed that even if First Union had the authority to merge the plans, the Signet plan was terminated, not merged, and employees should have gotten a payout they could reinvest elsewhere. The judge said that the plan wasn't terminated.

* The judge dismissed the claim that Signet employees had a right to past investment choices.

The judge didn't rule on several other counts, including claims that First Union ran the employees' 401(k) plan for its own benefit, that it breached its fiduciary duty to workers and that it didn't inform, or didn't properly inform, Signet employees about plan changes. Those counts could be resolved through a trial.

"I think there is more second-guessing with the employer that is in the financial industry when they limit the employees to their own, in-house funds," Daniel said. "I think (this) is an important case for financial institutions that offer self-directed retirement plans for their employees, because it should

establish a precedent over those standards that would be applied to selecting the funds available to employees."

The law doesn't tell employers how to pick funds, Daniel said. The case may provide guidance.

"I don't think the standard is you have to have the absolute best-performing fund in its class," he said.

The case is the first of two on the same issue. A second suit, which seeks class action status and is still pending, was filed in September by current and former First Union employees. It claims that in restricting employees to only First Union-controlled funds, the company is running the plan for its own benefit.

The law that governs how 401(k) plans are run is the Employee Retirement Income Security Act (ERISA). ERISA prohibits "self-dealing," meaning the person or legal entity with fiduciary responsibility for the plan (the one entrusted to safeguard the assets) can't deal with the assets for his own self-interest.

First Union's employee 401(k) plan had $3 billion under management as of last fall. The company's entire 401(k) business, which includes the employee amount, had $15.4 billion in assets under management as of the end of 1999.

With in $253 billion assets, First Union is the nation's sixth-largest bank.

NOTES: The following correction appeared on February 24, 2000 and refers to original tag no. 0002230333.

CORRECTION-DATE: February 24, 2000

CORRECTION:
Because of incorrect information provided by First Union, a story in Wednesday's Business section on a lawsuit involving First Union's 401(k) plan included the incorrect amount for the total assets under management in the company's 401(k) business. The amount is $23.1 billion.