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Suit Claims Pricewaterhouse Used 401(k) to Enrich Partners

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A former employee of PricewaterhouseCoopers LLP is suing the professional-services firm, saying it used its pension and 401(k) plans to enrich its partners at the expense of regular employees. Among other things, the complaint says Pricewaterhouse provided partners with a 200% matching contribution in their 401(k)s, compared with 25% matches to other employees, and provided partners with outsize contributions to their so-called cash-balance pension accounts. Such disparate treatment, the suit alleges, runs afoul of federal pension guidelines.

The suit, filed early this month, follows a similar suit involving Pricewaterhouse and Bank of America Corp. It comes amid broader concerns about how companies deploy their pension plans, with some employers being accused of using plans to enhance their bottom lines or fatten the wallets of already well-compensated executives. It also comes in the wake of heightened government scrutiny of decisions made by employers and consultants regarding the management of benefits plans.

David Nestor, a spokesman for Pricewaterhouse, said the firm believes its plans are lawful and fair to employees. "It's also important to note that this lawsuit does not claim any loss of employee benefits, because there were none," he said.
The suit, filed by Timothy D. Laurent in federal court in the Southern District of Illinois in East St. Louis, Ill., Nov. 5, seeks class-action status. Mr. Laurent, a managing consultant, worked at Pricewaterhouse from 1995 to 2001.

According to Mr. Laurent's complaint, Price Waterhouse LLP, a predecessor of Pricewaterhouse, in July 1994 froze its traditional pension plan and set up a cash-balance plan. Four years later, when Price Waterhouse and Coopers & Lybrand merged to create the current firm, Coopers & Lybrand's traditional pension plan was converted into a cash-balance plan, and the two firms' plans merged in July 1999.

Traditional pension plans calculate benefits by multiplying years on the job by average salary, so benefits grow rapidly in employees' later years. In a cash-balance plan, employees instead have hypothetical accounts that grow with annual credits based on a percentage of current pay, plus interest.

According to Mr. Laurent's suit, instead of crediting employee cash-balance accounts with a preset interest formula pegged to returns on Treasury bills, plus 1% to 2%, as is common with cash balance plans, Pricewaterhouse instead required employees to "invest" the value of their accounts in hypothetical portfolios tracking the returns of investment funds similar to ones available in the 401(k) plan also available to employees.

This arrangement shifted investment risk to employees and created a conflict of interest, the suit claims: "The worse the rank-and-file performed in their account balances, the smaller the (plan) benefits would be." Meanwhile, Pricewaterhouse could invest the pension money for potentially higher returns. This violated fiduciary duty rules, the suit says, because if the firm's own professional money managers believed there was a better way to invest the money, it should have told the participants in the plan.
Mr. Nestor said there were no breaches of fiduciary duty and that "each employee may do better or worse than the firm did through its investments." He said employees could choose among 16 investment options, including stable-value vehicles or riskier equity and fixed-income choices. "We believe the plans offer PwC employees benefits of flexibility and independent choice, through the ability to self-direct their investments," he added.

The suit also alleges that Pricewaterhouse took steps to provide the top-paid employees with an unfair share from the retirement savings plans. While most employees receive annual "credits" to their cash-balance accounts ranging from 5% to 8% of their annual pay, partners can receive an amount necessary to generate a benefit equal at retirement to $140,000 to $165,000 a year for life, depending on the returns in the investment options the partners select, people familiar with the matter said. Meanwhile, the suit says, partners also got a better deal in the 401(k). They could defer as much as the maximum allowed by law, $13,000 a year, and receive a 200% matching contribution, for a total annual accumulation of $39,000. By contrast, other employees receive a matching contribution of 200% only for the first month of participation in the plan, after which the amount falls to 25%.

To qualify for tax breaks, retirement plans such as 401(k)s aren't permitted to include only highly-paid employees, but also must provide a certain level of benefits for a broad swath of line managers and rank-and-file employees. To prove that they do this, companies must pass a "nondiscrimination" test that compares the percentages being accumulated by higher-paid and lower-paid workers.

The complaint says Pricewaterhouse was able to pass these tests by, among other things, providing lower-paid employees with the 200% match for the first month in which they participated in the 401(k) -- which, under the plan's rules, they weren't allowed to join until the last month of the year in which they are hired. This practice had the effect of making the contributions for lower-paid employees appear higher in December, which is when the firm "tested" the plan for discrimination.

The suit is related to another case pending in that court, Pothier v. Bank of America Corp., in which Pricewaterhouse is a co-defendant. That suit alleges that Bank of America forced employees to invest their pension accounts in hypothetical funds whose "returns" mirror those of proprietary investment funds managed by the bank. Bank of America has said its actions were legal and that it will vigorously defend the suit. Last week, it disclosed that the Internal Revenue Service, which oversees pensions, has been conducting an audit of its pension plan. Bank of America is an audit client of Pricewaterhouse, which designed the bank's pension plan.