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HEADLINE: FIRST UNION 401(K) SUIT MAY RIPPLE;

OTHER COMPANIES WILL BE WATCHING OUTCOME ON EMPLOYEE INVESTMENT OPTIONS

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BODY:

The lawsuit against First Union over management of its employees' 401(k) plan could have deep consequences for other banks and financial companies, experts say. Companies that require employees to invest 401(k) money only in the companies' own mutual funds will closely watch the suit.

The suit, filed this week by 18 current and former employees of Charlotte-based First Union, claims that they lost more than $100 million in retirement savings because the company used its in-house 401(k) plan to boost corporate profits rather than benefit employees. The suit seeks class-action status and more than $300 million in damages.

It's common for banks and other financial companies that have their own mutual funds to limit employees' plans to just those funds. Eli Gottesdiener, attorney with Sprenger & Lang, which represents the plaintiffs, says that usually means inferior investment choices.

The suit could be precedent-setting, some said.

"It may be at the end of the day, when the lawsuit is over, it may look like it was a lot of to-do about nothing. On the other hand, looking at it from today's standpoint, there's also the possibility for a decision that has great ramifications for other financial institutions," said Carl Johnson, benefits lawyer with Robinson, Bradshaw & Hinson in Charlotte, which was not involved in the case.

"Could this potentially be a big deal?" Johnson said. "Yeah, and I'd certainly be concerned and pay attention to it if I was an attorney for another financial institution or a benefits administrator for another financial institution."

First Union has issued this statement on the suit: "We have and will administer our plan for the benefit of the participants. Our plan provides participants with a broad range of investment options which are prudently and appropriately selected."

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 with fiduciary responsibility for the plan can't deal with the assets for his own self-interest. ERISA also bars a plan's sponsor from providing services to the plan, unless the arrangement and the fees are deemed reasonable.

The First Union case "has particular application to banks and other financial institutions," said James Daniel, employee benefits attorney with Womble, Carlyle, Sandridge & Rice in Charlotte. "But I think with the popularity of 401(k) plans and investment decisions made by employees now for their own accounts, there will be more cases that will arise in the future over the investment options made available to employees."

Raymond Williams Jr. is a plaintiff in the suit and a similar one filed in May by the same law firm.

Williams knows something of employee benefits plans; he was president of Signet Trust Co., which First Union bought.

"My basic issue in this suit is that, No. 1, if First Union was out in the marketplace today and trying to solicit a very large 401(k) plan to manage, any account that large, they would immediately discount the fees to get the account," said Williams, a Richmond, Va., resident.

Williams now works as a regional trust manager for BB&T's Richmond office. BB&T, like another Winston-Salem-based bank, Wachovia, restricts employee 401(k) choices to its own mutual funds. Williams wouldn't comment on his current employer's plan, other than to say that he thinks the suit will result in "a whole lot of employers looking at investment options currently available to their employees."