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HEADLINE: Ex-Employees Sue First Union Over Costs of 401(k) Plan

BYLINE: By DAVID CAY JOHNSTON

BODY:

Federal law requires that companies operate their retirement plans solely to benefit their workers, but a lawsuit filed yesterday accuses the First Union Corporation, which owns the nation's sixth-largest bank, of operating its 401(k) plan to earn "monopolistic profits" at the expense of its workers.

The suit contends that First Union, based in Charlotte, N.C., has charged higher fees to its workers than it has to those of companies whose much smaller 401(k) plans it manages.

First Union's 401(k) plan "fees and expenses are routinely hidden from participants, and in some cases, are affirmatively misrepresented" as being waived or discounted, according to the lawsuit, filed by 18 former employees in Federal District Court in Richmond.

The suit quotes internal memorandums that it says indicate an active campaign to hunt for ways to extract the maximum possible fees from the First Union 401(k) plan.

And, the suit says, when First Union wanted to move into the complicated business of keeping 401(k) records, it experimented using its 401(k) plan and then charged these costs to its workers.

First Union, saying it would vigorously defend itself, said employees have "a broad range of investment options which are prudently and appropriately selected" in a plan run for their benefit.

The lawsuit, which seeks class-action status, says that First Union's 71,000 employees have suffered $100 million in damages. It seeks triple that amount, however, contending that First Union has operated as a racketeering enterprise and in violation of antitrust laws.

The suit also says that Edward E. Crutchfield, the company's chief executive, and John Georgius, its president, knowingly allow and encourage conduct that benefits First Union at the expense of its workers and have made sure no one will "watchdog with independence and knowledge" the 401(k) plan.

Mr. Crutchfield and Mr. Georgius, the suit says, "intentionally failed to select" executives competent to protect the interests of 401(k) plan participants.

The suit contends that Benjamin J. Jolley, a First Union senior vice president who is on the board of the 401(k) plan, is so ill-informed about 401(k) issues that he testified recently in a related case that he did not know the difference between the Standard & Poor's 500-stock index and the Fortune 500 ranking of top companies and had no idea which was tracked by the stock index fund offered by the First Union 401(k) plan.

Mr. Jolley had no comment, said Donna Smart, a First Union spokeswoman.

He testified in a lawsuit filed last May by nine former employees of Signet Bank, which First Union acquired in 1997. That suit contends that First Union moved its 401(k) savings from investments that turned in strong performances into its far-less-lucrative Evergreen funds.

The suit filed yesterday goes much further, contending there are not just poor investment options but a long-running plan to find ways to load fees and expenses onto the 401(k) plan that has pushed costs far above what can be bought in the market from 401(k) vendors, including First Union.

The lead plaintiff in the suit, Sue B. Franklin of Danville, Va., said that when First Union sold the bank branch where she works, it kept her 401(k) plan and did so in a way that would force her to cash out and pay taxes now if she wants her money back before she turns 59 in five years.

"First Union is supposed to look after our money for our benefit, but they certainly have abused their power," Mrs. Franklin said.

Eli Gottesdiener of Sprenger & Lang in Washington, one of the lawyers who filed the suit, said he was contacted by workers at many other banks and mutual funds who said their 401(k) savings suffered because their employers "are engaged in similar practices to boost their fee income."

Mr. Gottesdiener added, "Unless these financial companies have controls in place, there is going to be a creeping infringment of business objectives on the needs of the plan."

He said that First Union's conduct was the most egregious he had found but that more such lawsuits were being planned.

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