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HEADLINE: First Union accused of gouging employees Workers angry over how bank runs 401(k) plan

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BODY:

A lawsuit filed Tuesday on behalf of First Union employees claims the bank's 401(k) plan is charging them too much and not giving them enough investment choices.

The retirement plan is administered by First Union, and the investment choices are all First Union funds.

The lawsuit, filed on behalf of about 100,000 current and former employees, seeks more than $ 300 million in damages and removal of First Union as the 401(k) plan administrator.

First Union, based in Charlotte, N.C., denies any wrongdoing. "Our plan provides participants with a broad range of investment options, which are prudently and appropriately selected," it says.

In a similar lawsuit filed in May, former Signet Bank employees complained about First Union's 401(k) plan after Signet was acquired by First Union. Lawyers will seek to combine the lawsuits.

The latest lawsuit claims First Union put profits ahead of the best interests of its 401(k) plan participants. Through a subsidiary, First Union offers record keeping and investment management to other 401(k) plans. The complaint says First Union's own 401(k) plan, which has about $ 3 billion in assets, is its biggest client.

But while other clients typically get discounts and rebates on fees, First Union plan participants pay full price for its services, the complaint alleges. And while other 401(k) plan clients get to invest in a variety of mutual funds, First Union participants get to choose only from First Union's own funds.

The lawsuit claims First Union is violating the federal Employee Retirement Income Security Act, which requires plan sponsors to prudently select and monitor investments and act exclusively for the benefit of employees.

Eli Gottesdiener, lawyer for plan participants, accuses the bank of an intracompany conspiracy to gouge employees. So he also is suing under the Racketeer-Influenced and Corrupt Organizations

law.

"This certainly turns up the heat on First Union," says Ted Benna, president of the 401(k) Association. He notes it can be difficult to prove a plan sponsor did a poor job picking investment options. "In hindsight, you can always find funds that outperformed what you have."

There have been few cases in which employees have sued their plan sponsor. "That's because the stock market has been so good," says Fred Reish, a Los Angeles pension lawyer. "I've been waiting for the other shoe to drop. If people start to lose a significant amount of money in their 401(k) plans, there will be lawsuits."