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Eighteen Former, Current Employees Sue First Union Over 401(k) Assets

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Eighteen former and current employees of First Union Corp. yesterday sued the nation's sixth-largest bank, alleging the bank illegally steered assets from its 401(k) retirement plan into its own mutual funds in order to boost the bank's profits.

The lawsuit, filed in U.S. District Court in Richmond, Va., seeks damages of more than $300 million, which includes the investment gains First Union employees claim were lost by approximately 100,000 workers who were forced to put their money solely into lesser-performing First Union mutual funds. The suit also seeks to force First Union to return all asset-management fees and expenses collected from the bank's 401(k) plan since 1993, and to permanently remove First Union as the plan's administrator.

When asked for comment on the suit, First Union, Charlotte, N.C., issued the following statement:

"We have and will continue to 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. First Union will vigorously defend this suit."

Eli Gottesdiener, a partner at Sprenger & Lang, the Washington law firm representing the First Union employees, said bank executives "have been running this plan as a profit center. . . . They forgot that they are fiduciaries."

The case would create a legal showdown over the duties of an employer to its company-sponsored 401(k) plan, a retirement program usually funded mostly by employee contributions.

First Union has pushed aggressively during the past several years to shrink its dependence on traditional businesses such as loans and deposits, leading bank executives to target the company's own 401(k) plan, with about $3 billion in assets, as a source of profit, the suit claims. For instance, the suit alleges that First Union allows its employees to choose from a much shorter list of investment products than offered to the bank's so-called "third-party" 401(k) clients, who also can pick from mutual funds managed by outside companies. The suit accuses First Union of treating its employees "like captives in order to realize monopolistic profits that it never could have earned through fair competition."

First Union also is accused of charging higher fees and expenses for 401(k) services to its employees than it does to outside clients, which often receive waivers and discounts, the suit alleges. The employees estimate they have been overcharged by at least $6.3 million, including by paying for a customer- service hot line that usually is offered to outside companies for free or at a reduced rate, the suit claims.

The suit pits First Union against a familiar rival. Mr. Gottesdiener's firm represents nine former employees of Signet Banking Corp. who sued First Union in May, claiming the company illegally shifted assets from Signet's 401(k) plan into its own mutual funds after acquiring Signet in late 1997. That suit is still pending. The firm also represented former bank employees who sued First Union for age and race discrimination after their companies were acquired by the bank. First Union agreed in 1997 to settle the suit for $58.5 million without admitting any guilt.