

Pricewaterhouse Ruling May Redefine BofA Pension

Tuesday, September 12, 2006 --- A ruling by a U.S. District Court judge that invalidated a PricewaterhouseCoopers pension over its retirement age definition may affect a similar pension at Bank of America Corp. that has come under fire.

In a class action against PWC, Judge Michael B. Mukasey in the U.S. District Court for the Southern District of New York decided last week that the retirement age under PWC's pension plan could not be defined according to years of service, but should be set at age 65. The accounting firm had helped establish Bank of America's cash-balance pension plan.

Participants in Bank of America's pension plan brought a class action in 2004, alleging the Charlotte, N.C.-based bank breached federal laws.

The plaintiffs alleged that the pension plan cost employees millions of dollars due to a glitch in the retirement date definition, which sets the mark at five years of service at the company instead of age 65. In a motion last year, the pension plan participants asked the court to make a decision on the definition.

A U.S. District judge in North Carolina has not yet ruled on the retirement age matter in the case.

Bank of America has maintained that its pension plan is legitimate. A bank spokesperson said Monday that Bank of America was looking over the ruling in the PWC case, but declined to make any additional comment.

In PWC's case last week, Judge Mukasey found that the accounting firm's cash-balance pension plan's normal retirement age was invalid because it was expressed as a term of years of service as opposed to a certain, specified age.

"Because a normal retirement age cannot be defined in reference to years of service, the [pension plan's] proposed normal retirement age is invalid. Because the [pension plan] does not provide for an alternative, valid normal retirement age, the normal retirement age is age 65," Judge Mukasey wrote in his opinion.

He also tossed out three of the class' four claims alleging that a PWC benefit plan ran afoul of the Employee Retirement Security Act of 1974.

The four-claim complaint—filed on March 23—contended the Retirement Benefit Accumulation Plan for Employees of PWC violated ERISA's rules for

calculating lump-sum benefits payable from a cash balance pension plan, rules for figuring out accrued benefits and rules governing age discrimination.

PWC moved to dismiss the complaint in its entirety, but Judge Mukasey allowed the complaint's first claim—which dealt with lump-sum payouts—to stand.

The plaintiffs argue that the way lump-sum benefits are calculated under the RBAP flies in the face of ERISA, and that the plan's interest rate used in calculated lump sums doesn't meet the standard established by the U.S. Court of Appeals for the Second Circuit in *Esden v. Bank of Boston*.

The RBAP is a cash balance pension plan under which a hypothetical account for each employee serves as the basis for determining benefits payable, according to the complaint.

The plaintiffs are represented by Gottesdiener Law Firm PLLC.

The defendants are represented by Kirkland & Ellis LLP.

The case is *Laurent v. PricewaterhouseCoopers LLP et al.*, case number 06-02280 in the U.S. District Court for the Southern District of New York.

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