

# Judge Certifies 200-Member Class In ERISA Action Against CoreStates

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A federal judge has certified a mandatory class-action ERISA suit against CoreStates Bank brought by a group of workers who claim they were deceived about their rights to benefits when the bank considered — and later abandoned — a plan to outsource their jobs.

In his 32-page opinion in *Feret v. CoreStates Financial Corp.*, U.S. District Judge William H. Yohn Jr. found that the workers have common legal issues and that separate suits could cause problems if courts imposed varying injunctions on the same ERISA plans.

Yohn exercised his discretion to create a subclass of 119 workers who signed waivers to settle their claims because they have the extra legal issue of showing that the waiver is not valid.

The ruling is a victory for attorneys Stephen G. Console and Carol A. Mager, who represent the class of more than 200 workers along with Console's associate Gianna M. Santarelli and Mager's associates Joel Schochet and Denise Kontrack.

According to the suit, in March 1997, CoreStates announced to its employees that it was broadening its relationship with Andersen Consulting into a long-term contract whereby Andersen would manage CoreStates' systems and technology group functions.

Terrence A. Larsen, then CoreStates' Chairman of the Board and Chief Executive Officer, and Rosemary B. Greco, then President of CoreStates, assured employees that "this means that people whose jobs are affected will receive benefits according to the CoreStates severance policy."

CoreStates personnel officials also told workers that they could consult the current severance policy to determine their rights.

That version of policy said that CoreStates provided "benefits to employees whose employment is involuntarily terminated for reasons other than for cause and who execute a release and waiver of claims in favor of CoreStates."

Significantly, the policy defined "involuntary termination" as "a termination initiated entirely by CoreStates for reasons other than for cause."

But the suit alleges that at the same time as the company was representing to employees that the current severance policy was on-line, CoreStates without warning or notice amended the policy and made it effective retroactively to

September 1996.

The amended policy redefines the term "involuntary termination" to include "the rejection of a new position offered to an employee by CoreStates that is ... a comparable position."

The two companies entered into a contract and on Nov. 1, 1997, Andersen assumed responsibility for certain CoreStates technology and operations functions. On that date, approximately 170 employees of CoreStates' Systems and Technology Group were terminated and transferred to the payroll of Andersen. Another group of more than 40 workers say they had already quit in anticipation of the change.

CoreStates had announced six months prior that it had reached an agreement in principle to establish a 10-year information technology alliance with Andersen. It said all CoreStates employees in the technology operations division would either be offered positions with Andersen or be retained by CoreStates.

But the workers said the transition meant just one thing — no more benefits. About 170 workers left work on Oct. 31, 1997, as employees of CoreStates and returned to the same jobs as nominal Andersen employees the next business day, Nov. 3, 1997. As Andersen employees, they continued to do the same work that they did as CoreStates employees, but did not receive any of the benefits that they received while they were CoreStates employees, they said.

The suit was filed on Nov. 3, 1997. Approximately two weeks later, CoreStates announced that it had entered into a merger agreement with First Union Corp. and that, in light of the merger, it had decided to terminate its agreement with Andersen.

In March 1998, CoreStates offered to rehire all of its former employees who were still employed with Andersen. Of the 170 who were laid off, 143 workers were still at Andersen and 137 accepted the offer.

During the litigation, CoreStates offered each of them a lump-sum payment of \$7,500 to settle their claims, and 119 accepted and signed waivers. Fifty-one others refused to sign.

CoreStates' lawyers, Lawrence Shiekman, Brian Ortelere and Michael

Rosenthal of Pepper Hamilton, argued that the case should not be certified as a class action because the workers had too many individual issues to litigate.

But Yohn found that the class satisfied all four prerequisites of Rule 23(a) — numerosity, commonality, typicality and adequacy of representation — and two parts of Rule 23(b).

Although one subclass may be as small as 50 workers, Yohn said it satisfied the numerosity requirement because the entire class numbers more than 200 and class treatment is appropriate "given the size of the individual claims and the gains to be made in judicial economy."

Both subclasses satisfy the commonality requirement, Yohn said, due to common questions which include whether CoreStates entered into an alliance with Andersen; whether CoreStates notified plaintiffs that they would be terminated and transferred to Andersen as a result of the alliance; whether CoreStates terminated plaintiffs pursuant to this alliance; whether such actions constitute prohibited

employer conduct within the meaning of ERISA Section 510; and, most importantly, whether CoreStates took these actions for the purpose of interfering with plaintiffs' ability to attain benefits.

CoreStates argued that the proposed class could not satisfy the commonality requirement with respect to their fiduciary misrepresentation claim because it requires individual inquiries into the materiality of CoreStates' alleged misrepresentations and the harms that each plaintiff allegedly suffered.

Yohn disagreed, saying, "In order to satisfy the commonality requirement, plaintiffs need to show only that the putative class members share one issue of fact or law in common with the named plaintiffs." The class met the test, he said, because "a question common to individuals in both of these subclasses is whether CoreStates' documents and e-mail messages constitute material misrepresentations."

While some employees may prove to have stronger cases than others — because they made specific inquiries and received additional misrepresentations specific to them — Yohn said "the court can always divide the class into additional subclasses."

The 3rd U.S. Circuit Court of Appeals

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has also held, he said, that individual damage determinations can be made at a separate phase of the trial.

The class also easily met the typicality prong, he said, because the claims of the

named plaintiffs arise "from the same alleged practice or course of conduct of defendants that gives rise to the claims of the members of the proposed class."

Turning to the requirements of Rule 23(b), Yohn found that the class should be certified as a mandatory, non-opt-out class because "there is a realistic possibility that separate actions would be brought in this

case in the absence of a class action."

Separate suits would be problematic, Yohn said, because "if plaintiffs independently brought suit against defendants and if plaintiffs' requests for declaratory and injunctive relief were granted in only some cases and not others, absent plaintiffs would be prejudiced. The conflicting decisions would affect the interests of all proposed

class members, as the relief sought pertains directly to the plans and contracts under which all class members are allegedly covered."

(Copies of the 32-page opinion in *Feret v. CoreStates Financial Corp.*, PICS NO. 98-1882, are available from The Legal Intelligencer. Please refer to the order form on page 7.)