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Broker Seeks Opt Out from Wells Fargo's $79 Mln Deferred-Comp Settlement

by Mason Braswell | News | WELLS FARGO | No Comments

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A former Wells Fargo Advisors broker in California is challenging a $79 million preliminary settlement reached in January over deferred compensation.

Vicki L. Bayley, who joined Stifel, Nicolaus in 2018 after a decade at Wells, asked a federal court in South Carolina on Thursday to let her intervene on behalf of former Wells brokers in California and North Dakota and opt out of the settlement.

Under terms of the agreement, all outstanding claims for deferred pay that Wells withheld when brokers moved to other firms were resolved. The settlement covers about 30% of the estimated $265 million that plaintiffs' lawyers claimed was owed to some 1,400 participants in Wells' Performance Award Contribution Plan.

Labor laws in California and North Dakota focusing on non-competitive business practices would entitle brokers in those states to recover 99% of the deferred compensation that Wells withheld, said Jarrod J. Malone, a lawyer at Shumaker, Loop & Kendrick who represents Bayley.

"We think that the claims in California and North Dakota would be so much stronger than claims for the remainder of the class that it is patently unfair for most of their deferred compensation left out," Malone said.

About 100 brokers representing around $9 million in deferred compensation would be eligible for opt-out from the settlement, he said.

A spokeswoman for Wells Fargo did not immediately return a request for comment.

William S. Norton, a lawyer with Motley Rice, one of three firms representing brokers in the settlement, declined to comment.

Robert F. Berry, the lead plaintiff in the brokers' class-action, argued that Wells's withholding of compensation tied to sales and length-of-service was illegal under the the Employee Retirement Income Security Act of 1974.

Wells Fargo in 2014 reached a $7.4 million settlement in a similar ERISA deferred pay case in California that paid 99 cents on the dollar, according to the motion, to intervene that Bayley filed this week.

Wells in both cases argued that it legally held on to the deferred bonuses because the brokers qualified as "management or highly compensated employees" whose "top hat" retirement plans were exempt from certain ERISA protections.

Bayley started her career at Merrill Lynch in 1997 and moved to Wells Fargo predecessor A.G. Edwards in 2003, according to her BrokerCheck record. She did not immediately return a request for comment.