

HR Weekly Podcast
04-30-2014

Today is April 30, 2014, and welcome to the HR Weekly Podcast from the State Human Resources Division. This week's podcast discusses a historic race discrimination settlement.

Eight years after a lawsuit was filed, a federal judge approved a \$160 million settlement between Merrill, Lynch, Pierce, Fenner & Smith and more than 1400 African-American financial advisers who said Merrill Lynch had discriminated against them. After the lawsuit was filed in 2005, Merrill Lynch was acquired by Bank of America Corporation. This race-discrimination class-action settlement was the largest in United States history according to the *New York Times*, netting an average of more than \$111,600 for the workers.

Plaintiffs had alleged that the playing field at Merrill Lynch was not even for minority brokers. Specifically, they alleged that Merrill Lynch's "teaming" and "account distribution" policies had a discriminatory impact on minorities in violation of Title VII of the Civil Rights Act of 1964 and 42 U.S.C. 1981. Merrill Lynch's teaming policy permits brokers in the same office to form teams; however, they are not required to form or join teams. Brokers, not managers, formed the teams and the team decided whom to allow to join as new members. Account distributions occur when brokers leave Merrill Lynch and their clients' accounts are transferred to other brokers. Brokers within a branch office compete for the accounts, based on criteria established by Merrill Lynch for deciding who will win the competition. Plaintiffs alleged that Merrill Lynch steered African-Americans into clerical positions and diverted lucrative accounts to white brokers, resulting in lower pay and fewer career growth opportunities for the African-Americans and reducing their share of commission-based pay allowing white workers to make 43 percent more on average in 2006.

Initially, the Plaintiffs' request for certification of the class was denied by the federal district court, which was affirmed by the Seventh United States Circuit Court of Appeals and the United States Supreme Court. Relying on a then new United States Supreme Court decision, the Plaintiffs renewed their motion. In February of 2012, over six years after the complaint was filed, the court of appeals certified the class action on behalf of African-American brokers at the firm. Merrill Lynch appealed the court of appeals decision, but the United States Supreme Court declined to hear Merrill Lynch's appeal which left the court of appeals' determination intact. The case had been scheduled for a January 2014 trial date before a federal district court when the settlement occurred.

In addition to the cash settlement, Merrill Lynch agreed to take part in a three-year program designed to improve conditions for African-American workers. If you have questions about this topic, please contact your HR consultant at 803-896-5300. Thank you.