IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JANET D. FRIEBERG, :
:
Plaintiff, :
:
v. : Civil Action No. 99-571-JJF
:
FIRST UNION BANK OF :
DELAWARE, et al., :
:
Defendants. :

Gary W. Aber, Esquire of HEIMAN, ABER, GOLDLUST & BAKER, Wilmington, Delaware.
Attorney for Plaintiff.

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MEMORANDUM OPINION

July 18, 2001
Wilmington, Delaware

FARNAN, District Judge.

Presently before the Court is Defendants' Motion for Summary Judgment or, in the Alternative, a Nonjury Determination (D.I. 27), and Plaintiff's Motion for Summary Judgment (D.I. 31). For the reasons set forth below, the Court will deny Defendants' motion and will grant Plaintiff's motion.

BACKGROUND

Janet D. Frieberg ("Plaintiff") was a Branch Manager in the Wilmington Office of CoreStates Bank ("CoreStates") in April 1998, at which time First Union Corporation and First Union Bank of Delaware (collectively "First Union") merged with CoreStates. Soon after the merger with CoreStates ("the Merger"), First Union launched a corporate wide reorganization ("Future Bank Initiative" or "FBI") that was necessitated by its increased use of automated and internet banking. As part of the FBI program, First Union decided that Plaintiff's Branch Manager position would be eliminated, so they offered Plaintiff a position as Customer Relations Manager ("CRM"). Plaintiff declined the offer and First Union terminated her from her employment in November 1998.

In February 1999, Plaintiff sought to obtain benefits under the CoreStates Severance Plan ("the Plan"). The Plan was established by CoreStates prior to the Merger in order to provide "supplemental employment benefits" for CoreStates employees who were terminated from their employment for non-performance reasons. CoreStates had reserved the right to terminate the Plan "at any time" and "for any reason." Under the terms of the Merger Agreement between First Union and CoreStates, First

Union agreed to maintain the Plan for one year from the date of the Merger, through April 28, 1999. (D.I. 29 at A41). However, First Union concluded that Plaintiff was not eligible for benefits under the Plan because Plaintiff had been offered a "comparable position" as defined by the Plan, and that by declining this offer, her termination was a "voluntary resignation." (D.I. 29 at A58-A61). First Union informed Plaintiff of this decision in a letter dated March 31, 1999. (D.I. 29 at A58-A61). Plaintiff appealed this decision in accordance with the Plan's claims procedure, but her appeal was rejected by First Union on July 12, 1999. (D.I. 29 at A49-A51).

On August 24, 1999, Plaintiff commenced this litigation against First Union and the Plan (collectively "Defendants"). Plaintiff agreed to dismiss her state law claims, claims for punitive damages, and claims for pain and suffering in November 1999 (D.I. 11), thus reducing this action to a single claim for benefits under the Employee Retirement Income Security Act ("ERISA"), Section 502(a), 29 U.S.C. § 1132(a). (D.I. 1). After the close of discovery, both parties filed cross-motions for summary judgment. (D.I. 27; D.I. 31).

STANDARD OF REVIEW

Rule 56(c) of the Federal Rules of Civil Procedure provides that a party is entitled to summary judgment if a court determines from its examination of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c). In determining whether there is a triable dispute of material fact, a court must review all of the evidence and construe all inferences in the light most favorable to the non-moving party. Goodman v.

Mead Johnson & Co., 534 F.2d 566, 573 (3d Cir. 1976). However, a court should not make credibility determinations or weigh the evidence.[1] Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 150 (2000). To defeat a motion for summary judgment, Rule 56(c) requires the non-moving party to:

> do more than simply show that there is some metaphysical doubt as to the material facts. . . . In the language of the Rule, the non-moving party must come forward with "specific facts showing that there is a genuine issue for trial." . . . Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is "no genuine issue for trial."

Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). Thus, a mere scintilla of evidence in support of the non-moving party is insufficient for a court to deny the motion. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986).

DISCUSSION

A. Heightened Arbitrary and Capricious Standard

The parties agree that the Plan gives the Plan Administrator broad discretion to interpret the Plan and to determine a claimant's eligibility for benefits under the Plan. (D.I. 28 at 11; D.I. 32 at 9-10). As a result, the arbitrary and capricious standard of review set forth in Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101 (1989) is applicable to the Court's review of Defendants' decision to deny Plaintiff's claim for benefits. Under this standard, a court can overturn the plan administrator's decision

[1] To properly consider all of the evidence without making credibility determinations or weighing the evidence, a "court should give credence to the evidence favoring the [non-movant] as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.'" Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 151 (2000).

only if the decision was "arbitrary and capricious." Orvosh v. Program of Group Ins. for Salaried Employees of Volkswagon of Am., Inc., 222 F.3d 123, 129 (3d Cir. 2000). A plan administrator's decision is "arbitrary and capricious" only if it is "clearly not supported by the evidence in the record or the administrator has failed to comply with the procedures required by the plan." Id. (citations omitted). This means that the court should not substitute its own judgment for that of the plan administrator, but rather, should be deferential to the plan administrator's judgment. Id.

The Court of Appeals for the Third Circuit has held, however, that in certain circumstances, a "heightened" arbitrary and capricious standard is necessary. Pinto v. Reliance Standard Life Ins. Co., 214 F.3d 377 (3d Cir. 2000). In Pinto, the court held that when the plan administrator acts under a conflict of interest, such as when an insurance company contracts with an employer to administer and fund benefits for the employer, a heightened arbitrary and capricious standard is needed to account for the insurance company's financial incentive to deny claims for benefits. Id. at 378. Under this standard, a sliding scale approach should be implemented so that the greater the plan administrator's conflict of interest, the less deference that will be afforded to the plan administrator's decision. Id. at 391-92. In doing so, the court must assess the substance of the decision as well as the process used to obtain the decision. Id. at 393. See also Goldstein v. Johnson & Johnson, 2001 WL 567719, at *7 (3d Cir. May 25, 2001).

In sum, as opposed to the "extremely deferential" arbitrary and capricious standard, a reviewing court should only be "deferential" under the heightened arbitrary and capricious standard of review. Pinto, 214 F.3d at 393.

Defendants contend that Pinto's heightened arbitrary and capricious standard should be applicable only when an insurance company administers and funds a benefits plan. (D.I. 28 at 14). The Court recognizes that language in Pinto suggests that the heightened standard should be limited to the insurance company context. For instance, the court explained:

> Employers typically structure the relationship of ERISA plan administration, interpretation, and funding in one of three ways. First, the employer may fund a plan and pay an independent third party to interpret the plan and make plan benefits determinations. Second, the employer may establish a plan, ensure its liquidity, and create an internal benefits committee vested with the discretion to interpret the plan's terms and administer benefits. Third, the employer may pay an independent insurance company to fund, interpret, and administer a plan.

Id. at 383. The Pinto court expressly stated that it was faced with the third type of plan, and that such a plan "generally presents a conflict of interest and thus invites a heightened standard of review." Id. However, other portions of Pinto suggest that the heightened standard should not be limited to the insurance company arrangement: "the first two arrangements do not, in themselves, typically constitute the kind of conflict" that would warrant heightened review. Id. (emphasis added). The court also opined that there may be variations on these three arrangements, and the circumstances of each variation "might affect a district court's assessment of the incentives of an administrator/insurer and therefore affect the nature of its review." Id. at 383-84 n.3.

Subsequent to Pinto, decisions from the Third Circuit and from district courts within the circuit have not characterized Pinto as being limited to the review of plans funded and administered by an insurance company. See Goldstein, 2001 WL 567719, at *7 (construing Pinto to require a heightened standard of review "when the plan, by its very design, creates a special danger of a conflict of interest, or when the beneficiary can point to evidence of specific facts calling the impartiality of the administrator into question"); Bill Gray Enters., Inc. Employee Health & Welfare Plan v. Gourley, 248 F.3d 206, 216 (3d Cir. 2001)(suggesting that Pinto's heightened standard applies to plans not administered by insurance companies if specific evidence of bias or bad faith is adduced); Orvosh, 222 F.3d at 129 n.7 (opining that Pinto's heightened standard applies whenever "the same entity both funds and administers an ERISA plan"); Davies v. Paul Revere Life Ins. Co., 2001 WL 681321, at *8 (M.D. Pa. June 13, 2001)(same). See also Skretvedt v. E.I. DuPont de Nemours & Co., 119 F. Supp. 2d 444, 451 (D. Del. 2000)(implying that an employer-administered plan should only be accorded the ordinary Firestone arbitrary and capricious standard if denied claims under the plan result in no direct financial benefit to the employer). In sum, Pinto's heightened standard is not limited to plans that are funded and administered by insurance companies; rather, a reviewing court must analyze each individual plan to determine the extent of any conflict of interest, and the resulting level of review. See Parente v. Aetna Life Ins. Co., 2001 WL 177086, at *2 (E.D. Pa. Jan. 25, 2001).

In the instant case, the Plan is funded and administered by Defendants, and any benefits paid to employees comes directly out of Defendant's operating funds and not from a separate trust fund. (D.I. 29 at A15; D.I. 33 at B30). As a result, like plans funded and administered by insurance companies, Defendants have a financial incentive to deny borderline claims because benefits paid are essentially expenses incurred. See Pinto, 214 F.3d at 389-99 (noting that a reason why insurance company administered plans have a conflict of interest is because benefits paid deplete the insurance company's revenues). Thus, even though the Plan is funded and administered by an employer, it is similar to the plan at issue in Pinto and dissimilar to plans discussed in decisions suggesting that employer-administered and funded plans do not present a conflict of interest. See Mitchell v. Eastman Kodak Co., 113 F.3d 433, 437 n.4 (3d Cir. 1997) (holding that employer administered plans do not present a conflict of interest when employer makes a fixed contribution to the plan trustee and when the funds are to be used solely for payment of benefits, because denying eligibility does not benefit the employer); Abnathya v. Hoffman-LaRoche, Inc., 2 F.3d 40, 45 n.5 (3d Cir. 1993)(same). Accordingly, the Court concludes that the structure of the Plan is substantially identical to the plan in Pinto, and that, therefore, a significant conflict of interest is present.

Defendants nonetheless contend that the structure of the Plan presents less of a conflict of interest than in Pinto because an employer-administrator has an incentive to administer its plan fairly in order to maintain employee morale. (D.I. 28 at 14)(citing Pinto, 214 F.3d at 383). At first glance, Pinto appears to support Defendants' contention; however, the Pinto court cited Nazay v. Miller, 949 F.2d 1323, 1335 (3d Cir. 1991) in support of its conclusion that employer-administered plans did not present a conflict. Pinto, 214 F.3d at 389. In Nazay, the court concluded that employer-administrators have incentives to make health care benefit eligibility determinations fairly in order to avoid loss of morale and higher wage demands that would be caused by benefits claims repeatedly being denied. 949 F.2d at 1335. Nazay also reasoned that because the dispute concerned the eligibility of one claimant rather than a class of claimants, it was less likely that a conflict of interest existed. Id.

In the instant case, Defendants were reorganizing the company pursuant to their FBI program, thus minimizing their incentive to maintain morale by administering the Plan fairly. See Pinto, 214 F.3d at 392 (noting that employer-administrators have less incentive to maintain employee morale when it is engaging in massive layoffs or a corporate restructuring)(citations omitted). Moreover, any claimants that were denied benefits under the Plan are former employees, and current employees will have little reason to fret over Defendant's interpretation of the Plan because it is no longer in existence. Lastly, although the instant litigation involves only one claimant, Plaintiff adduced evidence of an internal email expressing Defendants' concern that, if benefits were paid to Plaintiff, it would create a precedent entitling many other claimants to severance benefits stemming from Defendants' FBI program and also might result in numerous employees choosing to receive benefits under the Plan rather than to accept a new job offer, thus causing a staffing "shortage." (D.I. 29 at A71).[2]

In sum, the Court concludes that the Plan is substantially similar to the type of plan discussed in Pinto. Accordingly, the Court will apply the heightened arbitrary and capricious standard when reviewing Defendants' decision to deny Plaintiff's claim for benefits.

B. Application of the Heightened Arbitrary and Capricious Standard of Review

When applying the heightened arbitrary and capricious standard of review, the Court must examine the procedures used to reach the decision to deny benefits in addition to the merits of the decision. The Court will examine each of these factors below.

[2] The email read in relevant part: "Brian is also concerned that if we do [conclude that a certain job is not a "comparable position"] for one job group we will need to look at all non-target jobs where the over max salary is brought to maximum at 6 months. . . . Lastly, if we allow this offer to be non-comp, what will that do to our staffing situation and the number of openings that could result." (D.I. 29 at A71).

1. The Procedure

The Court concludes that several procedural anomalies occurred or existed when Defendants decided to deny Plaintiff's claim for benefits. First, Plaintiff received an email on May 15, 1998 from Patricia Nace, an employee in Defendants' human resources department, advising Plaintiff that the CRM position was a "non-comp offer," and that she could refuse to accept the offer and still be eligible for severance benefits. (D.I. 29 at A57). The Pinto court opined that "inconsistent treatment of the same facts" by the plan administrator is a procedural anomaly that warrants a court to review the decision "with suspicion." 214 F.3d at 393 (citations omitted). Here, a human resources representative and the plan administrator took opposite views as to the same claimant, thus requiring the Court to increase its scrutiny of Defendants' decision.

A more egregious procedural defect is that Defendants failed to adhere to the Plan's Claims Procedures. The Plan Administrator, Vik Dewan, authored an email in September 1998 to his co-workers indicating that Defendants were going to argue that the CRM position was comparable to Branch Manager. (D.I. 29 at A66-A67). This "lobbying" effort by Mr. Dewan evidences that he had taken an adversarial approach early on in the dispute. When Plaintiff officially sought to obtain benefits under the Plan, Mr. Dewan, as the Plan Administrator, concluded she was ineligible and authored the March 31, 1999 letter informing her of this decision. (D.I. 29 at A58-A61). Lastly, Mr. Dewan also served as the "Appeals Fiduciary" that rejected Plaintiff's appeal. (D.I. 29 at A49-A51). By serving as both the Plan Administrator and the Appeals Fiduciary, Mr. Dewan violated the express terms of the

Plan's Claims Procedures.[3]

In sum, the Court concludes that the above-discussed procedural anomalies require the Court to "ratchet-up" its review of the merits of Defendants' decision on the sliding scale of heightened arbitrary and capricious review.

2. The Merits

i. Relevant Plan Provisions

To be eligible for severance benefits under the Plan, (1) the employee's termination from employment must have been an "involuntary termination" or a result of a "reduction in force," and (2) CoreStates must have determined that the employee was entitled to benefits. (D.I. 29 at A8-A9).

An "Involuntary Termination" is defined by the Plan as:

[3] In particular, the Plan states that the Plan Administrator is to be the "Chief Human Resources Officer of CoreStates or the person who fills the position that is equivalent to the Chief Human Resources Officer." (D.I. 29 at A8). The Plan further states that all decisions of the Plan Administrator are "final, binding and conclusive upon the parties, subject only to determinations by the Named Appeals Fiduciary." (D.I. 29 at A11). The "Named Appeals Fiduciary" is "the member of the Office of the Chairman, other than the Chief Executive Officer, to whom the Chief Human Resources Officer normally reports." (D.I. 29 at A14)(emphasis added). Since the Chief Human Resources Officer, i.e., the Plan Administrator, obviously cannot report to himself, the Plan implicitly prohibits the same person serving as the Plan Administrator and as the Appeals Fiduciary. Accordingly, the Court concludes that such a procedural anomaly supports the conclusion that Defendants' decision to deny benefits was arbitrary and capricious.

Defendants nonetheless contend that "ERISA imposes no obligation on employers to appoint separate individuals to render initial claims determinations and to handle appeals." (D.I. 38 at 14)(citing Sweatman v. Commercial Union Ins. Co., 39 F.3d 594, 598-99 (5th Cir. 1994)). Defendants' argument, however, fails to acknowledge that its own Plan requires separate decisionmakers. Thus, the Court concludes that Defendants' contention is irrelevant. See Abnathya, 2 F.3d at 48 ("[u]nder the arbitrary and capricious standard, the court must defer to the administrator unless . . . the administrator has failed to comply with the procedures required by the plan").

> a termination initiated entirely by CoreStates for reasons other than (i) for Cause; [or] (ii) for Performance Reasons. . . . An "Involuntary Termination" shall include (i) the rejection of a new position offered to an Employee by CoreStates that is not a Comparable Position. . . . A Position Downgrade shall not be an "Involuntary Termination."

(D.I. 29 at A7).

A "Position Downgrade" is defined as: "the regrading of an Employee's position by CoreStates to a lower Job Grade (which may include a reduction in Base Pay) without any significant change in job responsibilities and without relocation of the Employee outside of the mileage range set forth in the definition of Comparable Position." (D.I. 29 at A8).

A "Comparable Position" is defined as "an offer of another job at CoreStates [or First Union] which . . . has a comparable compensation level, as determined in accordance with CoreStates' then Severance Pay Policy." (D.I. 29 at A6).

"Comparable compensation level" is not defined in the Plan, but CoreStates had published a Summary Plan Description ("SPD"), in accordance with ERISA, to be distributed to its employees. (D.I. 28 at 6 n.2; D.I. 29 at A23). The SPD does not explicitly define "comparable compensation level," but does implicitly define it as 100 percent "of the total compensation opportunity of the terminated employee's present position." (D.I. 29 at A25).

A "Voluntary Resignation" is defined as a "refusal to accept a Comparable Position." (D.I. 29 at A8).

ii. Defendants' Rationale for Denying Plaintiff's Claim for Benefits

Defendants rejected Plaintiff's claim for benefits because they concluded that the CRM position was a “comparable position” to Branch Manager, thus making Defendants’ termination of Plaintiff for failing to accept the CRM offer a “voluntary resignation,” which precluded Plaintiff from becoming eligible for benefits under the Plan. (D.I. 29 at 59-60). Defendants admitted in their March 31, 1999 letter to Plaintiff that they were going to reduce Plaintiff’s CRM salary on May 1, 1999, in accordance with their FBI program, but concluded that this intention did not render the CRM position “non-comparable.”[4] (D.I. 29 at A60). Specifically, Defendants reasoned that Plaintiff’s Branch Manager salary exceeded the maximum that was allowed for her job grade, and that under the FBI program, “all individuals whose salaries exceeded the maximum for their salary range were to have their salary brought in line with the maximum for the salary range . . . by approximately May 1, 1999.” (D.I. 29 at A60). Therefore, Defendants reasoned that Plaintiff’s salary as CRM would have been identical to her pre-FBI salary “through the last effective date of the CoreStates Severance Plan (April 28, 1999),” and that, therefore, the CRM position was a “comparable position.” (D.I. 29 at A60).

On appeal, Plaintiff raised two substantive arguments to rebut Defendants’ conclusion. First, Plaintiff argued that the salary offered for the CRM position was $67,843.10, but that her salary prior to her November 6, 1998 termination was $71,235.32. (D.I. 29 at A54-A55). Second, Plaintiff argued that the guaranteed salary reduction on May 1, 1999 rendered the CRM offer “non-comparable.” (D.I. 29 at A55).

Defendants rejected Plaintiff’s appeal on July 12, 1999. (D.I. 29 at A49-A51). First, Defendants disagreed that Plaintiff’s Branch Manager salary was $71,235.30 at the time she was

[4] Plaintiff’s salary was to be reduced to $59,700. (D.I. 29 at A55).

offered the CRM position. (D.I. 29 at A51). Defendants noted that Plaintiff's Branch Manager salary was $67,843.10 at the time the CRM position was offered to her in July 1998, and that Plaintiff's Branch Manager salary was not raised to $71,235.30 until August 1, 1998. (D.I. 29 at A51). Second, Defendants rejected Plaintiff's argument that her anticipated May 1, 1999 salary reduction rendered the CRM position non-comparable. (D.I. 29 at A51). Defendants reasoned that, under the Plan, there was no guarantee that an employee's salary would never be reduced, but rather, the Plan merely required the new position to have the same salary as the old position "as of the time the [new] position is offered." (D.I. 29 at A51). Since Plaintiff's Branch Manager salary in July 1998 was the same as the initial starting salary offered for the CRM position in July 1998, Defendants reasoned that the CRM position was "comparable" to Branch Manager. (D.I. 29 at A51).

iii. The Court's Analysis of Defendants' Decision

The Court concludes that under the heightened review warranted in this case, Defendants decision to deny Plaintiff's claim for benefits cannot be sustained. Specifically, the Court finds Defendants' rationale that the anticipated May 1, 1999 reduction in Plaintiff's CRM salary did not make the CRM position non-comparable is not supported by the record. Defendants advanced three arguments in support of this rationale: (1) under Defendants' FBI program, all above-maximum salaries were to be reduced on May 1, 1999, so even if Plaintiff had retained her Branch Manager position, her salary still would have been reduced, (2) the offer of a comparable position does not forever preclude the new position's salary from being reduced, and (3) the reduction in salary would not have occurred until three days after the Plan was to be lawfully terminated. (D.I. 28 at 18-19; D.I. 38 at 16-17). The

Court concludes that all three justifications advanced by Defendants are insufficient to support Defendants' conclusion.

First, if Plaintiff had retained her Branch Manager position and her salary was reduced on May 1, 1999, she would not have been entitled to severance benefits because the salary reduction would merely have been a "Position Downgrade,"[5] which does not amount to an "Involuntary Termination" under the Plan. However, Plaintiff was forced to accept a position with entirely different job responsibilities, which does not qualify as a "Position Downgrade." Therefore, the fact that Plaintiff would have faced a salary reduction even if she had retained her Branch Manager position is not dispositive.

Second, the Court agrees with Defendants that the offer of a "comparable position" does not preclude a future salary reduction, and that the Plan "contemplate[s] that future events may occur that could impact the terms of employment without impacting eligibility for benefits," such as a "position downgrade." (D.I. 38 at 17). However, the instant case involves a future salary reduction that, when Defendants offered Plaintiff the CRM position, was guaranteed to occur. Defendants cannot avoid paying severance benefits by initially setting the salary for a new position at one rate so that it qualifies as a "comparable position," but then reduce the salary several months later. Such conduct is an improper manipulation of the Plan's provisions, and, contrary to Defendants' contention, does not

[5] As discussed above, a "Position Downgrade" is "the regrading of an Employee's position by CoreStates to a lower Job Grade (which may include a reduction in Base Pay) without any significant change in job responsibilities and without relocation of the Employee outside of the mileage range set forth in the definition of Comparable Position." (D.I. 29 at A8) (emphasis added).

comport with the definitions of “comparable position” and “comparable compensation level” nor does it advance the general purposes of the Plan.

Lastly, the Court finds that the fact the salary reduction would not have occurred until May 1, 1999, actually supports the conclusion that Defendants’ decision was arbitrary and capricious. Defendants boldly state that Plaintiff is seeking “to impose a nonexistent right to a minimum salary level under a Plan no longer in existence.” (D.I. 38 at 18). The Court finds the timing of the salary reductions, only three days after the Plan was to terminate, to be striking evidence that Defendants intentionally chose this date in order to avoid paying severance benefits to affected employees.[6] In fact, Defendants do not even attempt to explain the peculiar timing of the salary reductions. Therefore, the Court concludes that Defendants’ determination that the CRM position was “comparable” to Branch Manager is unsupported by the record, and hence, arbitrary and capricious.[7]

[6] Defendants cite Haberern v. Knaupp Vascular Surgeons Ltd. Defined Benefit Pension Plan, 24 F.3d 1491, 1499 (3d Cir. 1994) for the proposition that an employer’s decision regarding employees’ salaries is a business decision made in a non-fiduciary capacity. (D.I. 38 at 21). The language of the offer, however, underscores Defendants’ concern about Plaintiff’s eligibility for severance benefits in that the first paragraph of the offer declares that the CRM position “is considered a comparable job offer.” (D.I. 29, Exh. 3). This fact combined with Defendants’ failure to explain the advantageous timing of this offer leads to the inescapable conclusion that the timing of the offer and the timing of the salary reductions were both manipulated in order to support Defendants’ contention that the CRM position was “comparable.” Therefore, the Court concludes that the offer was not simply a business decision.

[7] Based on the above conclusion, it is unnecessary to address Defendants’ other justification for their decision, i.e., that Defendants offered Plaintiff the CRM position before Plaintiff received her August 1, 1998 Branch Manager raise, and therefore, the pre-August 1, 1998 salary should be used to determine whether the CRM position was “comparable.” The primary dispute at issue here is when the CRM position was officially offered to Plaintiff: July 28, 1998; July 31, 1998; or August 4, 1998. The answer to this dispute involves legal issues that are not addressed in the parties’ briefs and factual

In sum, the Court concludes that Defendants' determination that the CRM position was a "comparable position" to Branch Manager is unsupported by the record, and that the justifications offered by Defendants in defense of their decision underscore this conclusion.

CONCLUSION

The Court concludes that the structural design of the Plan presents a conflict of interest that warrants application of the heightened arbitrary and capricious standard of review, and that several procedural defects existed during Defendants' decision-making process that warrants a scrutinizing review on the "high end" of the Pinto sliding scale. Applying this standard, the Court concludes that Defendants' decision to deny Plaintiff's claim for benefits cannot be sustained. Therefore, Defendants' Motion for Summary Judgment or, in the Alternative, a Nonjury Determination (D.I. 27) will be denied, and Plaintiff's Motion for Summary Judgment (D.I. 31) will be granted.

An appropriate Order will be entered.

questions that are not addressed in the record, and therefore, the Court refuses to resolve the dispute. However, the Court finds that Defendants' reliance on the unexplained, peculiar timing of the offer supports the conclusion that Defendants timed the offer so that they would be in a better position to argue that the CRM position was "comparable" to Branch Manager.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

JANET D. FRIEBERG, :
:
Plaintiff, :
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v. : Civil Action No. 99-571-JJF
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FIRST UNION BANK OF :
DELAWARE, et al., :
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Defendants. :

FINAL ORDER

At Wilmington this 18 day of July, 2001, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

1. Defendants' Motion for Summary Judgment or, in the Alternative, a Nonjury Determination (D.I. 27) is **DENIED**.

2. Plaintiff's Motion for Summary Judgment (D.I. 31) is **GRANTED**.

3. Judgment is entered in favor of Plaintiff and against Defendants on all counts.

UNITED STATES DISTRICT JUDGE