

Efinancial Careers

23 July 2009

How to make a bank settle out of court

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Some Dresdner Kleinwort bankers may get last year's guaranteed paid bonuses after all: Commerzbank is said to be settling out of court.

Yesterday, Bloomberg reported that Commerz has settled with at least two of the eight senior Dresdner bankers who are bringing claims against it.

The move isn't entirely unsurprising. The Dresdner bankers concerned reportedly had contracts entitling them to the guarantees, so Commerzbank's decision not to pay them always looked a little suspect.

"Over 90% of cases are settled out of court, it's generally seen as preferable for both sides," says **Ronnie Fox of Fox Lawyers**.

Several factors are necessary (although not sufficient) for achieving an out of court outcome:

- 1) Lots of money: The bank you're up against needs to be aware that you have the funds to take it to court if necessary. In the case of the ex-Dresdner employees it helped that they were senior and there were lots of them.
- 2) Sensitive information: If a case goes to court, information a bank would rather keep totally secret is likely to be made public. During the 2004 Stephanie Villalba discrimination case, Merrill Lynch was forced to reveal detailed bonus information, for example.
- 3) An indication that the bank might be open to negotiation: Most cases which are settled don't have a starting point of zero, says Philip Landau of solicitors Landau Zeffertt Weir. "People have usually been given an existing offer through a compromise agreement and you're upping that by negotiation."
- 4) A strong case: This goes without saying. Banks will usually try and fight where they have a strong contractual case for not settling, says Landau. Bonus cases, in which terms have been set out in writing are a case in point.