

News Release



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Marietta Industrial Enterprises Ordered to Repay \$19,000 to 401(k) Plan

COLUMBUS, Ohio – The U.S. Department of Labor has obtained a consent judgment and order requiring the trustees of the 401(k) plan of Marietta Industrial Enterprises Inc. of Marietta, Ohio, to pay \$19,358 as restitution for failing to forward employee contributions and loan repayments to the plan. Following the filing of the department’s lawsuit, the trustees restored \$63,372 to the plan.

The judgment also removes the trustees, permanently bars them from service to plans governed by federal benefits law, and appoints Michael Davis as the successor fiduciary to administer the plan. The former trustees and new trustee also will obtain and maintain a fidelity bond for the 401(k).

“The Department of Labor will aggressively enforce the law to protect the retirement funds of this nation’s hardworking men and women,” said Joseph Menez, director of the Cincinnati regional office of the Employee Benefits Security Administration (EBSA). “Our legal action will ensure that these workers receive future benefits owed to them.”

On Jan. 3, 2003, the Labor Department sued trustees David Downing, Burt M. Elliott, William Scott Elliott, R. Grant Elliott and Thomas L. Rose for violating the Employee Retirement Income Security Act (ERISA) by failing to forward employee contributions from January 1997 to November 30, 2002. Marietta Industrial filed for Chapter 11 bankruptcy in U.S. Bankruptcy Court of the Western District of Pennsylvania.

Employers with similar problems, who are not yet the subject of an investigation by EBSA, may be eligible to participate in the department’s Voluntary Fiduciary Correction Program (VFCP). Participation in the VFCP requires employers to make workers whole but allows them to avoid EBSA enforcement actions and civil penalties as well as any applicable excise taxes. For more information about the VFCP, see www.dol.gov/ebsa.

The suit, filed in the federal district court in Columbus, resulted from an investigation conducted by EBSA’s Cincinnati regional office. In fiscal year 2003, EBSA achieved record monetary results totaling \$1.4 billion for retirement, 401(k), health and other programs. Employers and workers can reach EBSA’s Cincinnati regional office at (859) 578-4680 or through EBSA’s toll-free number at **1-866-444-EBSA(3272)**, for help with problems relating to private-sector retirement and health plans.

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(Chao v. Marietta Industrial Enterprises, Inc.)
Civil Action No. 03-CV-017

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