

News Release



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Executive of Defunct Illinois Manufacturer Sued Over Delinquent 401(k) Employee Contributions

CHICAGO – The U.S. Department of Labor today sued the former president of Bimet Corporation in Morris, Ill., for failing to timely remit employee contributions to the company’s 401(k) profit sharing plan and retaining the assets with those of Bimet.

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

The suit alleges that John Buckner violated the Employee Retirement Income Security Act (ERISA) when he failed to remit contributions withheld from employees’ paychecks to the 401(k) plan from Nov. 30, 2001, to March 31, 2002. At the time of the violation, Buckner was the president and majority owner of Bimet. The suit alleges he failed to take steps to collect the delinquent contributions owed to the plan, used the contributions to benefit Bimet and failed to obtain a fidelity bond as required by law.

The suit seeks to require that Buckner repay any losses with interest, undo any transactions prohibited by law and be removed as a fiduciary to the plan. The department also is seeking a court order to appoint an independent fiduciary to terminate the plan and distribute its assets to eligible participants.

Bimet was a manufacturer of bimetal thermostats for global appliance industry until it ceased operations on July 12, 2002. That same year, the State of Illinois involuntarily dissolved the company and its assets were sold. The 401(k) provides retirement, death or disability had three remaining participants and \$9,901.20 in assets as of Oct. 2, 2002.

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 Chicago, resulted from an investigation conducted by EBSA’s Chicago 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 Chicago office at (312) 353-0900 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. Buckner)
Civil Action No. 04 C 5604

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