

# News Release



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## **Newton Employer Restores Over \$71,000 to 401(k) Plan Independent Fiduciary Named to Manage Plan**

**BOSTON** – The U. S. Department of Labor has obtained a consent judgment appointing an independent fiduciary to manage the 401(k) plan of J. Biotti, Inc., of Newton, Mass., and distribute the assets to plan participants. The construction contracting company and its president, Joseph Biotti III, have restored over \$71,000 to the company's 401(k) plan to resolve a lawsuit filed by the department.

The Employee Benefits Security Administration (EBSA) enforces the federal law that protects private-sector employee benefit plans such as retirement and health benefit plans. The law, known as the Employee Retirement Income Security Act (ERISA), prohibits those who administer plan assets from using the assets for their own benefit.

An investigation by EBSA's Boston regional office revealed that the company, as plan sponsor and plan administrator, Joseph Biotti III and Joseph Biotti, Jr. (now deceased), as fiduciaries of the plan, failed to transmit amounts withheld from employee paychecks to the plan and instead diverted the money for other purposes.

"It is totally unacceptable for the company and the individual fiduciaries to divert 401(k) plan funds for purposes such as the daily operations of the company. Funds withheld from employee paychecks as 401(k) contributions become assets of the plan and can only be used for the benefit of the plan participants or their beneficiaries," said James Benages, EBSA's Boston regional director.

The department's suit, filed simultaneously with the consent judgment, also alleged that the company failed to file required forms and reports for the plan for all plan years since 1999.

The judgment requires the defendants to waive any claims for benefits from the 401(k) plan, appoints an independent fiduciary to manage the plan, make distributions and terminate the plan, permanently prohibits Joseph Biotti III from serving as a fiduciary to any ERISA covered plan and orders the defendants to cooperate with the independent fiduciary and pay all necessary expenses.

Finally, the defendants are ordered to pay a \$10,000 penalty to the U.S. Department of Labor, which was imposed by a federal judge in May 2003 in connection with the enforcement of a subpoena relating to this case. The court actions were filed with the U.S. District Court for the District of Massachusetts.

This case was investigated by the Boston regional office of EBSA. Employers and workers can contact the regional office at 617-565-9600 or EBSA's toll-free number, **1-866-444-EBSA (3272)**, for help with problems relating to private-sector pension and health plans.

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(Chao v. J. Biotti, Inc. - Civil Action No. 03-12465-GAO)