

News Release



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U.S. Labor Department Sues Defunct Georgia Construction Firm Over Delinquent 401(k) Contributions

ATLANTA -- The U.S. Department of Labor has sued defunct Omegasys Inc., Tucker, Ga., and its CEO for failing to forward and timely remit to the company's 401(k) plan \$79,407.80 in contributions withheld from workers' paychecks.

"This lawsuit underscores the Labor Department's commitment to hold accountable those who are entrusted with overseeing workers' retirement plans. One of the most important responsibilities is remitting money from workers' wages to the plan to make sure assets are available to pay future retirement benefits," said Howard Marsh, director of the Atlanta regional office of the Employee Benefits Security Administration (EBSA).

The lawsuit alleges that Omegasys Inc., which served as the plan's administrator, and plan trustee Keith R. Jackson violated the Employee Retirement Income Security Act (ERISA) by failing to ensure that employees' contributions were remitted to the plan. From Dec. 11, 1998 to April 12, 2002, the suit alleges 156 instances of late contributions resulting in losses to the plan. In addition, the company co-mingled plan assets with corporate assets.

Jackson allegedly failed to monitor the company's activity or take action to remedy its failure to forward the contributions to the plan. At the time of the violations, Jackson was the chief executive officer and chief financial officer of Omegasys. Both defendants allegedly failed to obtain a fidelity bond as required by law.

The suit seeks a court order to restore all losses with interest and offset Jackson's retirement account to repay money owed to the 401(k). The department also asks the court to remove the defendants from their positions with the plan, permanently bar them from service to any plan governed by ERISA, and appoint a successor trustee and administrator to terminate the plan and distribute its assets to eligible participants.

Omegasys, also known as Omega Environmental Services Inc., was engaged in environmental construction before going out of business. The firm sponsored the 401(k) for 20 participants and had \$223,585 in assets as of Jan. 31, 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. Participation in the program requires employers to correct ERISA violations but allows them to avoid EBSA enforcement actions and civil penalties as well as any applicable excise taxes. For information, see www.dol.gov/ebsa.

The Atlanta regional office conducted the investigation leading up to the lawsuit filed in federal district court in Atlanta. In fiscal year 2004, EBSA achieved record monetary results of \$3.1 billion related to the pension, 401(k), health and other benefits of millions of American workers and their families. Employers and workers can reach the Atlanta office at (404) 562-2156 or through EBSA's toll free number, 1-866-444-EBSA (3272), for help with problems relating to private-sector retirement and health plans.

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(Chao v. Omegasys, Inc.) Civil Action No. 1:05-cv-0432

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