Protecting America's Pensions Plans from Fraud: Will Your Savings Retire Before You do?
Bill Number:
Hearing Date: June 9, 2005, 10:00 am
Location: SD430
Witness:
Mr. John Endicott
Local 290, Plumbers, Steamfitters & Marine Fitters, Tualatin, OR
Business Manager
Testimony

Mr. Chairman and Members of the Committee:

My name is John Endicott. I am from Gresham, Oregon. I have been a steamfitter for over 30 years and have been a member of the United Assoc. Local 290 Plumber, Steamfitter and Marine Fitter union since 1972. I am the Business Manager of U.A. Local 290, which is located in Tualatin, Oregon.

I have been a union trustee since March 2002, and I currently serve as Secretary of the U.A. Local No. 290 Plumber, Steamfitter, and Shipfitter Industry Pension Plan and Trust; the U.A. Local No. 290 Plumber, Steamfitter, and Shipfitter Industry 401(k) Plan and Trust; the U.A. Local No. 290 Plumber, Steamfitter, and Shipfitter Industry Health and Welfare Plan and Trust; the U.A. Local No. 290 Pre-Funded Retiree Health Trust; U.A. Local No. 290 Educational Reimbursement Trust; U.A. Local No. 290 Training Trust; and the U.A. Local No. 290 Scholarship Trust, among other Local trust funds.

In my current position as Business Manager I represent approximately 4,300 steamfitters and plumbers. Virtually all of the membership participates in one or more of the Trusts. Most of those members have families who are also beneficiaries of the Trusts. In the aggregate, our Trusts administer pension, health, and welfare, and other benefits for over 22,000 participants and beneficiaries, recognizing that there is substantial overlap where members and their families participate in more than one Trust. A census of the membership in 2004 shows that members of my Local, and participants and beneficiaries in my Local's Trusts, live in 30 of the 50 states in this country, including Alabama, Georgia, Wyoming, , Iowa, Maryland, Nevada, New Mexico, North Carolina, and Washington. The majority of our active members live and work in Oregon, Washington, and Northern California.

I want to tell you about the serious impact that the collapse of Capital Consultants had on me and on my fellow union members and the debacle that we all faced when we first heard that much of our hard-earned pension, health and other benefits had been stolen, misappropriated or lost through reckless and fraudulent schemes concocted by corrupt money managers who we had entrusted to handle our funds. In addition, Mr. Chairman, I want to mention some things that I think the federal government needs to do in order to protect workers' pension and benefit trust funds. This is money that our members have spent a lifetime accumulating and need to depend upon to pay for their retirement, medical and other benefits in sickness and old age.

Mr. Chairman, the members of my Local are all hard-working men and women. Many of us have labored for decades with our hands and our backs. We know a lot about plumbing and pipefitting. When it comes to investing our Trust Fund assets, we turn to professionals to give us advice. We rely on investment managers, pension consultants, lawyers, accountants, and insurance agents when it comes to decisions about investments in stock funds, real estate trusts, hedge funds or collateralized notes. To help us make the kinds of prudent decisions we need to be making with our members' money, trustees like me depend upon the advice of those professionals that we hire.

Beginning in approximately 1975, my Local began to invest through the Capital Consultants firm in Portland, Oregon. By June of 2000, the U.A. 290 Trusts had entrusted more than $159 million of our workers' pension and other Trust fund money with that firm. This was all money that the Trusts were trying to safeguard for our members – money that they would require for their retirement and for their medical bills and the like. Those funds represented much of the safety net our members were depending upon. Capital Consultants knew that and they had an obligation to invest that money prudently and in the best interests of our participants and beneficiaries. However, in just a blink of an eye, much of that money evaporated into thin air – almost like a cloud of steam – along with all of the hopes and dreams of most of our members. I – like our 4, 300 members and their families – were shocked and devastated to discover that we had lost more than $75 million, most of that in what Capital Consultants described as an insured, collateralized note program. Unbeknownst to us, the notes were neither insured nor collateralized. Our 401(k)s were frozen, which meant that we could not move our investments.

Mr. Chairman, we had hired professionals to guide and advise us, and those professionals had all assured us that Capital Consultants was doing a good job and our money was safe. Unfortunately – as we were later to discover – many of those professionals we had paid were dead wrong. The professionals we depended upon had simply failed us. They just didn't do the kind of work or exercise the due diligence that we have a right to expect. They didn't provide the level of oversight that we depended upon. We were fooled and – as a result – our members lost.

How could this have happened to us and, equally important, how can we protect others from experiencing this type of loss in the future? First, the representatives of Capital Consultants lied to us. As we later learned, Capital Consultants never told us the true nature of their investments in private placement loans. For example, they represented that our investments through Capital Consultants Collateralized Note Program were secured by collateral and that the Notes were insured. Neither was true. What we later learned was that when loans failed or when investors sought to terminate their relationship with Capital Consultants, Capital Consultants simply sought out more pension money to prop up the failed loans or to liquidate clients who wanted to terminate Capital Consultants. In the most egregious case, Capital Consultants had loaned more than $157 million of mostly union trust fund money and when those loans were discharged in bankruptcy Capital Consultants hid that fact by lying to the Trusts and representing that it had a new investor who had assumed the loans. What Capital Consultants did not tell us was that it pumped an additional $80 million through entities it functionally controlled to create an appearance that the failed loans were actually performing.

Second, the governmental entities charged with oversight of investment managers for employee benefit plans subject to ERISA should have more clearly defined authority to act on the local level. I understand that Capital Consultants was under scrutiny and investigation by the Department of Labor through most of the 1990s. At the Local level, we had little if any information from the Department of Labor that Capital Consultants was under investigation. In addition to having clear authority to act at the local level, the Department of Labor should employ personnel specifically trained to understand the investments money managers make with employee benefit plan assets. Alternatively, the Department of Labor should work closely with the Securities and Exchange Commission to enforce compliance regarding investments made by investment mangers.

Third, clarify civil laws and regulations that apply to pension consultants, investment managers and other professionals who advertise the ability to monitor employee benefit plan investment managers. These financial professionals place themselves between the Trustees and the investment managers and their credentials suggest that they are in the best position to warn of improprieties in an investment manager's operations.

Finally, enforce the criminal law. A man who robs a store of a few hundred dollars at gun point might be sentenced to ten years in prison. The sentences in this case seem very light in comparison to the losses.

Thank you for giving me the opportunity to share with you my concerns and those of the members of my Local.