

News Release



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Labor Department Sues Defunct Ohio Construction Company And Trustee Over Delinquent 401(k) Contributions

CLEVELAND— The U.S. Department of Labor has sued defunct Allied Construction Group, Inc., of North Olmsted, Ohio, and its 401(k) plan trustee for failing to remit employee contributions to the plan and retaining the contributions with company's general assets.

"This action demonstrates the department's commitment to protection of the retirement benefits promised to America's workers," said Joseph Menez, director of the Cincinnati regional office of the department's Employee Benefits Security Administration (EBSA), which investigated the case.

The suit alleges that Allied Construction and Thomas E. Zimmer violated the Employee Retirement Income Security Act (ERISA) by failing to remit employee contributions withheld from employees' paychecks to the company's 401(k) plan from May 2002 through January 2003. They also failed to timely remit employee contributions from January 1999 through April 2002 and to replace the plan's fidelity bond after the prior bond was cancelled in January 2003. Zimmer was the owner of Allied and the 401(k) trustee.

The suit, filed in the federal district court in Cleveland, seeks to restore all losses to the plan, including lost opportunity costs, to appoint an independent fiduciary to manage the plan, distribute the assets and terminate the plan and to obtain a fidelity bond for the plan. The suit also seeks to permanently bar Zimmer from serving as a fiduciary to any employee benefit plan covered by ERISA.

In related action, the department filed an adversary complaint in federal bankruptcy court in Cleveland to prevent Zimmer from discharging any debt he owes to the plan.

Allied specialized in general construction of commercial buildings, restaurants, office buildings and post offices. The company ceased doing business in February 2003. The plan had eight participants and \$75,054 in assets as of June 30, 2003.

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.

In fiscal year 2003, EBSA achieved record monetary results of \$1.4 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 regional office at (859) 578-4680 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. Zimmer) Civil Action No. 1:04-cv-475
(U. S. v. Zimmer) Adversary Complaint No. 03-25848

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