

# News Release



U.S. Department of Labor  
Office of Public Affairs  
Washington, D.C.  
Release Number 04-987-ATL

For Immediate Release  
June 9, 2004  
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## **U.S. Labor Department Settles Suit Against Alabama Firm and Plan Officials Over Delinquent Employee Contributions**

**ATLANTA**—The U. S. Department of Labor has obtained settlements with fiduciaries of the 401(k) plan of Smith Advanced Technology Inc. of Huntsville, Ala. that bar them from serving plans governed by the Employee Retirement Income Security Act (ERISA). The company's president, Bill G. Smith, also restored \$44,621.48 to the plan as restitution for using employee 401(k) contributions to pay corporate expenses and creditors.

Under the settlement, Smith is permanently barred from service to ERISA plans in the future, and trustees Jerry Peevy and Bart Smith are barred from serving plans for three years. In an earlier settlement, trustee Glen D. West made restitution.

The department sued the defendants on Nov. 14, 2003, in federal district court in Birmingham. The defendants allegedly violated ERISA when they failed to remit employee contributions to the plan at various times between June 1, 2001, and March 31, 2002. The suit also alleged that the defendants did not hold the plan's assets in trust.

Smith Advanced Technology was a software provider to cable and utility companies and sponsored the plan for 31 participants. The 401(k) had \$685,949 in assets at the end of 2000, which has since been distributed to participants.

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](http://www.dol.gov/ebsa).

"Our court action ensures that these plan participants recoup the money they set aside for their retirement years," said Howard Marsh, Atlanta regional office director of the Employee Benefits Security Administration.

This case was investigated by EBSA's regional office in Atlanta. 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 EBSA at (404) 562-2156 or EBSA's toll free number, (866) 444-3272, for help with any problems relating to private-sector pension and health plans.

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(Chao v. Smith Advanced Technology, Inc.) Civil Action No. 5:03 CV 3064

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