

News Release



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Labor Department Sues Michigan Corporation and President To Restore Delinquent Contributions

DETROIT, Mich.--The U.S. Department of Labor sued Beninati Contracting, Inc. of Utica, Mich., and its president for failing to forward employee contributions and loan repayments to the company's 401(k) plan and to segregate the plan contributions from the general operating assets of the company.

"The department will act when plan fiduciaries fail to carry out their duty to protect the retirement plan assets held on behalf of participants," said Joseph Menez, director of the department's Cincinnati regional office of the Employee Benefits Security Administration (EBSA).

The lawsuit alleges that Beninati Contracting, Inc. and Mark Beninati failed to remit employee contributions to the Beninati Contracting Inc. 401(k) Plan and Trust at various times between May 1999 and December 2001. They also commingled the contributions with the assets of the company, failed to remit loan repayments to the plan between May 1999 and December 2000 and did not obtain a fidelity bond as required by the Employee Retirement Income Security Act (ERISA). Mark Beninati also was the plan's trustee.

The suit seeks to require Beninati Contracting and Beninati to restore to the plan all contributions plus interest and correct any prohibited transactions. The department's suit also seeks the appointment of an independent fiduciary to terminate the plan and distribute the assets to participants and beneficiaries.

Beninati Contracting, which performed debris and land clearing services, ceased doing business in 2001. The plan had 10 participants and \$17,465.41 in assets as of April 9, 2004.

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.

The suit, filed in federal district court in Detroit, resulted from an investigation conducted by the Detroit district office of EBSA. Employers and workers can reach the Cincinnati 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. 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.

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Chao v. Beninati Contracting, Inc.
Civil Action No. 04-74542

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