Fact Sheet

U.S. Department of Labor
Employee Benefits Security Administration
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Contributory Plans Criminal Project

Background

Millions of American workers share in the costs of employee benefits by contributing to employer sponsored retirement and health benefit plans. In 2010, the Department of Labor's Employee Benefits Security Administration (EBSA) initiated the Contributory Plans Criminal Project (CPCP) to combat criminal abuse of contributory benefit plans.

The CPCP focuses on protecting employees who participate in all types of contributory plans - both pension and health.

Through the CPCP, EBSA is committed to punishing those who defraud these plans, and to deterring others who might contemplate such crimes. The participants in contributory plans are vulnerable to various forms of criminal abuse, so the CPCP was designed to address the panoply of relevant criminal violations.

There are a number of ways in which contributory plans can be vulnerable to criminal abuse. Employers, or others with authority over plan assets, may convert employee payroll contributions for their own personal use or they may misapply employee contributions to cover business expenses.

In the case of contributory retirement plans, such as 401(k) plans, the theft of plan assets can deprive employees of their hard-earned retirement savings. Misuse of employee contributions in contributory health plans can result in unpaid health benefits or insurance premiums, leaving workers suddenly without medical coverage.

Unscrupulous service providers may also target contributory benefit plans for their personal profit. EBSA has uncovered instances where third parties gained access to plan funds and siphoned off the money for their own financial gain. EBSA has uncovered instances where culprits have stolen participants' identity information to gain access to their employee benefit plan accounts.

EBSA works closely with other federal, state, and local agencies to enforce laws safeguarding contributory plan assets. Criminal prosecution of individuals who abuse their authority or control over contributory plans can result in severe criminal penalties, including imprisonment. Those convicted of embezzling or misappropriating moneys intended to fund pension plans or pay health benefits typically are barred from providing services or acting in any capacity for a period of 13 years.

EBSA Enforcement Efforts

From the inception of the CPCP project in FY 2010 through March 31, 2013, EBSA has:

- Initiated 623 investigations
- Referred 424 investigations to prosecutors
- Obtained 141 indictments with 72 guilty pleas/convictions
- Restored assets of $3,317,643.

Recent Criminal Prosecutions

U.S. v. David R. Biggerstaff – On March 21, 2013, David R. Biggerstaff was sentenced in the U.S. District Court, Western District of Wisconsin, to six months in federal prison, followed by three years supervised release, for converting assets from an employee pension plan, in violation of 18 U.S.C. § 664. Biggerstaff was also ordered to pay $25,194.28 in restitution to the victims. Biggerstaff pleaded guilty to the embezzlement on January 10, 2013.

Biggerstaff bought Owen Vending in 2005, changing the business's name to Premier Vending. As Premier's customers delayed paying their invoices, Biggerstaff found it increasingly difficult to pay his employees, including his two sons, and his own vendors. In an effort to keep the business going, he borrowed against his home and credit cards. Eventually Biggerstaff began withholding employee payroll deductions intended for the Premier Vending, Inc. 401(k) Plan; by January 2009, he had retained approximately $26,000 in employee retirement plan contributions.

The Chicago Regional Office conducted the investigation into Biggerstaff's thefts. The case was prosecuted by the U.S. Attorney's Office for the Western District of Wisconsin.

U.S. v. Richard A. Odermatt - On February 12, 2013, Richard A. Odermatt, owner of Odermatt Floor Covering, Inc., entered into a Plea Agreement in the U.S. District Court for the District of Nebraska in which he admitted to embezzling $58,912.28 from the Odermatt Floor Covering, Inc. Profit Sharing Plan and Trust and the Odermatt Floor Covering, Inc. Health Plan. From April 2009 through July 2011, Odermatt withheld contributions from his employee's paychecks that had been meant for the pension plan and as health and disability insurance premiums, respectively. Instead, Odermatt deposited these monies in his company's checking account. The investigation was conducted by the Kansas City Regional Office and prosecuted by the U.S. Attorney's Office for the District of Nebraska.

State of New York v. Karen M. Wilson - On January 4, 2013, Karen M. Wilson appeared in the Oneida County Courthouse, State of New York, for sentencing as a result of a plea agreement. Wilson had been a bookkeeper with the Nackley Agency located in Utica, New York, and had some control over corporate accounts. Between January 2006 and March 2011, Wilson embezzled a total of $52,000 in employee contributions, payroll, and corporate funds for her personal use. She reportedly used some of the stolen money to repay her own 401(k) loan account. Wilson was charged in a 27 count indictment in September 2012 and pled guilty in late October 2012. Wilson was sentenced to 6 months incarceration at the Oneida County Jail, 5 years of probation, a $325 surcharge, and a $50 DNA testing surcharge. The defendant made a one payment restitution of $52,000. The Boston Regional Office conducted its investigation in cooperation with the IRS-OIG, the FBI, and the Utica Police Department.

U.S. v. Jacqueline D. Jones - On July 6, 2012, Jacqueline D. Jones was sentenced in federal district court in Alexandria, Virginia, to intermittent confinement of 90 days, ten months of home confinement with electronic monitoring, and was ordered to pay $52,441.88 in restitution following her guilty plea in

March 2012 to one count of embezzlement from an employee benefit plan (18 U.S.C. § 664). The court structured Jones's sentence so that she could continue to work in order to pay the restitution. Indeed, Jones was ordered by the court to remain in her current employment, and could change jobs only after notifying her probation officer.

Jones was the owner and president of SPS Technologies, Inc., based in Dulles, Virginia. SPS Technologies sponsored a 401(k) plan for its employees, and Jones served as trustee of the plan. Between January 2008 and May 2009, Jones improperly converted to her own use approximately $10,135.51 of employee contributions to the plan. In addition, in May 2009, she had the balance of plan assets, worth nearly $36,000, wired to her personal bank account. Jones also fraudulently obtained approximately $7,254.00 in unemployment insurance benefits from the Virginia Employment Commission from approximately September 2009 to July 2010. The investigation was conducted by EBSA's Washington District Office and the DOL Office of Inspector General. The case was prosecuted by the U.S. Attorney's Office in Alexandria, Virginia.

U.S. v. Ronald John Kambic - On January 12, 2012, Ronald John Kambic, former sponsor of the Golden Financial Partners SIMPLE IRA, was sentenced in the First Judicial District of Colorado to 24 months' probation and was ordered to pay back the $9,712 in employee contributions that he had embezzled. Kambic had taken money from his employees' paychecks that had been intended for the Golden Financial Partners SIMPLE IRA. Instead, Kambic commingled the employees' pension contributions with funds in his corporate bank account and used the money for his own purposes. The investigation was conducted by EBSA's Kansas City Regional Office and prosecuted by the District Attorney's Office for Jefferson County, Colorado.

State of Texas v. Crystal Dawn Calkins – On June 4, 2012, Crystal Calkins was sentenced in state court in Bexar County, Texas to 120 months in prison and was ordered to pay restitution of $142,849. In October 2011, Calkins had pleaded guilty to one count of theft of more than $100,000 and less than $200,000. She had served as the Senior Accounting Associate for Verity National, a TPA firm. Verity National manages Flexible Spending Accounts for businesses, associations and brokerages nationwide. Calkins admitted that, between January 2005 and February 2009, she stole over $100,000 from several Flexible Spending Accounts overseen by Verity by issuing fraudulent checks to herself from the accounts. EBSA's Dallas Regional Office worked with the Bexar County District Attorney's Office in investigating this case.

United States v. Delroy Sand, Jr. - On September 8, 2011, Delroy Sand, Jr. was sentenced in Federal District Court in Minnesota to 41 months in federal prison and three years of supervised release for pleading guilty to one count of embezzlement from an employee benefit plan. He had pleaded guilty in March 2011 to one count of embezzlement from an employee benefit plan for stealing $642,166.81 from the Hecla, Inc. Employees Retirement Savings Plan.

Hecla, Inc. provided adult foster care as well as group home and mental health services in Minnesota. Sand, Hecla's founder and owner, was a licensed psychologist and longtime businessman active in Minnesota. He appointed himself the trustee of the Hecla, Inc. Employees Retirement Savings Plan and promptly began to steal from the plan. During his tenure as the plan's trustee, Sand made numerous illegal transfers from the plan's trust accounts to company accounts he controlled.

The criminal case was investigated by EBSA's Kansas City Regional Office and prosecuted by the United States Attorney's Office in Minneapolis, Minnesota.

United States v. Alexandria West - On June 3, 2011, Alexandria West was sentenced in federal district court in Maryland to 60 months' probation and was ordered to repay $76,608. West had pleaded guilty in December 2010 to one count of theft or embezzlement from an employee benefit plan. West operated two businesses, the West Financial Group in Bethesda, Maryland, and West Pension Solutions in Towson, Maryland. Employees of both firms contributed to the West Agency 401(k) Profit Sharing Plan through payroll deductions. Between August 2008 and November 2009, West failed to remit $76,608.66 in employee contributions to the plan, and instead used these funds for personal expenses. Twelve employees were affected.

The case was prosecuted by the United States Attorney's Office in Greenbelt, Maryland, and investigated by the Washington District Office of EBSA.

United States v. Kimberly Hill - Kimberly Hill, the former accounts payable manager for Wildwood Industries, was sentenced on December 9, 2010 to 40 months' incarceration and a subsequent three years of supervised release. The sentence, issued by the Federal District Court for the Central District of Illinois, required Hill to restore $76,894.06 to 174 individual employees. These employees had contributed to their benefit plans through payroll deductions but did not receive their plan benefits.

Hill had pleaded guilty in March 2010 to federal charges of conspiracy to committing mail fraud, wire fraud, bank fraud, and theft from an employee benefit plan. Wildwood Industries, located in Bloomington, Illinois, was owned by Gary and Toni Jo Wilder. The company manufactured lawn, leaf, and vacuum bags as well as other products. Wildwood sponsored a 401(k) plan and a health, dental, and disability plan for its employees.

Kimberly Hill's theft from the employee benefit plans was part of a larger criminal scheme. The Wilders, along with Hill and several other co-conspirators, engaged in a massive scheme to defraud 85 banks, lending institutions, and private lenders of over $213 million dollars. Only Hill was charged with actual theft of employee benefit plan funds. As the accounts payable manager, she had failed to forward funds worth over $200,000 withheld from employees' payroll checks for the benefit of these plans. Hill's actions left the plans facing approximately $140,000 in outstanding medical claims.

EBSA's Kansas City Regional Office investigated the case with the Department of Labor's Office of Labor Racketeering and Fraud Investigations, the FBI, Postal Inspectors, IRS-Criminal Investigations Division, and the FDIC. The case was prosecuted by the United States Attorney's Office for the Central District, Illinois.

United States v. Anthony A. James - On September 9, 2010, Anthony A. James, an investment advisor who operated James Asset Advisory, LLC (a Michigan corporation), was sentenced in federal district court to 163 months of imprisonment followed by 60 months of supervised release. The court also ordered James to pay $2,667,762 in restitution to his victims. James had been convicted on April 15, 2010 on seven counts of mail fraud, six counts of wire fraud, and one count of embezzlement from an employee benefit plan.

From 2001 through June 2009, James had received over $5,300,000 from more than 40 investors. A portion of these funds had come from ERISA-covered contributory employee benefit plans. James would meet with his clients to assess their investment goals and risk tolerances. He assured them that he would invest their funds in securities, bonds, and mutual funds for their benefit. James created fraudulent individualized asset allocation reports suggesting investment options, backed by bogus quarterly account statements which appeared to track the investors' money as though it had actually been invested. In fact, James used investors' money to operate a Ponzi scheme; instead of investing the money, he spent approximately $2,500,000 for his personal use and paid out around $2,800,000 to prior investors.

This investigation was conducted by EBSA's Detroit District Office in conjunction with the Department of Labor Office of Inspector General and the FBI and prosecuted by the United States Attorney's Office, Eastern District of Michigan.

United States v. Gary L. Merritt - On November 23, 2010, Gary L. Merritt, Vice President of Bemcore, Inc., located in Dayton, OH, was sentenced in U.S. District Court, Southern District of Ohio, Western Division to serve five years of probation and to pay $182,070.56 in restitution within the year. The sentence followed Merritt's guilty plea, filed in August, 2010, to one count of theft from an employee retirement plan, in violation of 18 U.S.C. § 664.

Gary Merritt had co-owned Bemcore, Inc., a family-run tool and die company. The company sponsored the Bemcore, Inc. Employee Incentive Plan, a 401(k) retirement savings plan for which Merritt was the Trustee. From the beginning of 2009 until the spring of 2010, Merritt had illegally transferred employee contributions out of the Bemcore 401(k) plan to Bemcore, Inc.'s corporate bank account and used the funds for business purposes.

The investigation was conducted by EBSA's Cincinnati Regional Office and prosecuted by the United States Attorney's Office for the Southern District of Ohio.

United States v. Pacesetter Corporation of America - On March 29, 2010, the Pacesetter Corporation of America, located in Omaha, Nebraska, pleaded guilty in the federal District Court of Nebraska to charges that it had stolen employee contributions and COBRA payments intended for the company's medical, group life and accidental death and dismemberment plans. Pacesetter was a manufacturer and direct seller of home improvement products such as windows, siding, and doors and had approximately 2,500 employees. The firm filed for bankruptcy in November of 2005 and ceased operations.

Pacesetter was charged with one count of embezzlement from a health care benefit program and one count of embezzlement from an employee benefit plan. For several months in 2005, Pacesetter kept funds deducted from employees' payroll that were to be used to pay claims covered under the plans. It also continued to accept and deposit COBRA payments from former employees. At the same time, Pacesetter failed to pay its claim obligations. In addition, Pacesetter did not inform employees that they had lost their coverage. Participant employees consequently suffered over $1.4 million in unpaid medical claims. At sentencing, Pacesetter received 12 months of probation and was ordered to pay the participants $67,533, the amount the defendants had withheld from employees' pay and COBRA payments.

The investigation was conducted by EBSA's Kansas City Regional Office and prosecuted by the United States Attorney's Office for the District of Nebraska.

This fact sheet has been developed by the U.S. Department of Labor, Employee Benefits Security Administration, Washington, DC 20210. It will be made available in alternative formats to persons with disabilities upon request: Voice phone: 202-693-8664; Text telephone: 202-501-3911. In addition, the information in this fact sheet constitutes a small entity compliance guide for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.