Fact Sheet

U.S. Department of Labor
Employee Benefits Security Administration
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Rapid ERISA Action Team for Bankruptcy

In carrying out its responsibility to protect participants and beneficiaries' benefits, EBSA has targeted populations of plan participants who are potentially exposed to the greatest risk of loss.

One such group of individuals is participants and beneficiaries of plans whose sponsor has filed for bankruptcy or is in financial peril. In bankruptcy situations, it is common to find employers holding assets that belong to or are owed to plans and occasionally intermingling those assets with the employers' own assets. Unless those assets are identified in a timely manner during bankruptcy proceedings and the appropriate action is taken, employees could permanently lose their right to their unpaid employee contributions.

The REACT project focuses EBSA's response in an expedited manner to protect the rights and benefits of plan participants when the plan sponsor faces severe financial hardship or bankruptcy and the assets of the employee benefit plan are in jeopardy.

Under REACT, when a company has declared bankruptcy EBSA takes immediate action to ascertain whether there are plan contributions that have not been paid to the plans' trusts, to advise all affected parties of the bankruptcy filing, to provide assistance in filing proofs of claim to protect the plans, the participants, and the beneficiaries, and if necessary, to seek the appointment of an independent fiduciary to distribute plan assets to participants and beneficiaries.

EBSA also attempts to identify the assets of the responsible fiduciaries and evaluate whether a lawsuit should be filed against those fiduciaries to ensure that the plans are made whole and the benefits secured.

In one REACT investigation, the Department obtained default judgments requiring Elmhurst, Illinois based A.B.D. Tank & Pump Company and company president Keith Davis to restore over $2.7 million to the A.B.D. Tank & Pump Company 401(k) & Profit Sharing Plan & Trust. The orders require the defendants to restore losses to the plan caused by Davis' withdrawals from the plan for himself and the company from December 6, 2006 through November 4, 2010. The court also appointed an independent fiduciary to oversee distributions to plan participants and to terminate the plan. The judgments were entered in the U.S. District Court for the Northern District of Illinois.

In the investigation of the Heartland Foods 401(k) Profit Sharing Plan, the Department obtained a $322,294 default judgment in the U.S. District Court for the Southern District of Indiana. The February 19, 2013 judgment requires the restoration of employee contributions and loan repayments that were commingled with the financially distressed company's operating accounts, distributions to co-owner Danny Woods and another participant that exceeded the plan's allowable distribution limit, and lost interest. The judgment also permanently bars Heartland from serving as an ERISA plan fiduciary.

In another investigation, the Department obtained judgments against John Dombek III and John Dombek Jr. in the total amount of $69,521 for restoration of health care premiums and retirement plan contributions withheld from the paychecks of employees of several companies that are part of the JJD Industries Group, based in Schiller Park, Illinois. Dombek III and Dombek Jr. served as fiduciaries of the Wisconsin Tool & Stamping Company 401(k) Plan, to which the Dombeks were ordered to pay $22,164 for unremitted contributions and lost opportunity costs. Dombek III served as a fiduciary to the J.D. Acquisition 401(k) Plan and the Group Health Plan. He was ordered to restore to these plans $2,223 and $45,134, respectively, for unremitted contributions and lost opportunity costs. The U.S. District Court for the Northern District of Illinois also removed Dombek III and Dombek Jr. from their fiduciary positions, and each has been barred from serving as fiduciaries or service providers to any ERISA-covered employee benefit plan for a period of five years. A court-appointed independent fiduciary will oversee the termination of the 401(k) plan and the distribution of assets to eligible plan participants. Both Dombek III and Dombek Jr. filed for Chapter 7 bankruptcy protection, but the Department filed complaints to determine the dischargeability of their respective obligations to restore the court-ordered amounts to the three plans. The U.S. Bankruptcy Court for the Northern District of Illinois granted the Department's separate motions for default judgment on October 5 and October 16, 2012, finding the Dombeks' debts to the plan non-dischargeable in bankruptcy.

Default judgments were entered against Derek Michael Danks, Karen Williams, and Sun Mortgage, LLC, requiring the defendants to restore $52,173 to the plan for unremitted participant contributions and loan repayments and interest on unremitted and untimely remitted contributions and loan repayments. Danks, the President of Sun Mortgage, and Williams, an employee of the company, served as fiduciaries of the Sun Mortgage Corp., LLC Plan. The judgment removed Danks and Williams from serving as fiduciaries of the plan and permanently bars them from serving as fiduciaries or service providers to any ERISA-covered plan. The court also appointed an independent fiduciary to terminate the plan and distribute its assets to plan participants and beneficiaries. The judgments were entered in the U.S. District Court for the Northern District of Indiana on March 4, 2013.

From Fiscal Year 2013 through **March 31, 2013**, EBSA achieved over $14.8 million in monetary results through this project.

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 alternate formats 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.