

News Release



U.S. Department of Labor
Office of Public Affairs
Washington, D.C.
Release Number 05-237-PHI

For Immediate Release
Date: February 10, 2005
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U.S. Labor Department Sues Bankrupt Delaware Firm and Executive Over Delinquent Employee Contributions

PHILADELPHIA, Pa.—The U.S. Department of Labor has sued bankrupt Foley Jewelers Christiana, Inc. (FJC) of Newark, Del., its president, and the administrator of its 401(k) plan for failing to remit and timely forward employee contributions to the 401(k) plan. The department also filed an adversary legal action in bankruptcy court against FJC's president seeking to have his debt to the plan deemed non-dischargeable.

"Trustees of a 401(k) plan have a responsibility to ensure that the assets of the plan are used solely to benefit participants," said Mabel Capolongo, director of the department's Philadelphia regional office of the Employee Benefits Security Administration (EBSA). "One of the most important responsibilities is putting money from workers' wages into their 401(k) accounts on time."

The department's federal court lawsuit alleges that FJC, president David A Mazer and Foley Brofsky, Inc. (the plan administrator) violated the Employee Retirement Income Security Act (ERISA) when they failed to forward and timely remit employee contributions to the plan's account starting in January 2002. The suit also alleges ERISA violations resulting from the failure to hold the 401(k) contributions in trust, the failure to separate the contributions from the assets of the company, and the failure to pay interest on any delinquent contributions.

The suit seeks to require that the defendants restore all losses with interest. The department also asks the court to appoint an independent fiduciary to replace the defendants and to permanently bar them from service to any ERISA-covered plan in the future. The lawsuit and adversary complaint resulted from an investigation conducted by EBSA's Philadelphia regional office. The legal actions were filed in federal district court and federal bankruptcy court in Philadelphia.

Mazer operated a chain of jewelry stores, including Foley Jewelers Christiana and Foley Brofsky, Inc. The 401(k) plan, sponsored by Foley Brofsky, has approximately 19 participants. The plan had \$561,469 in assets as of Dec. 31, 2003. Both FJC and Mazer are in bankruptcy proceedings.

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 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. Employers and workers can reach EBSA's Philadelphia regional office at (215) 861-5300 or EBSA's toll-free number at **1-866-444-EBSA (3272)**, for help with problems relating to private-sector retirement and health plans.

(Chao v. Mazer)
Civil Action No. 05-611
Bankruptcy Case No. 05-00077-kjc

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