

# News Release



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## **Bankrupt Alabama Firm and Executive Sued Over Delinquent 401(k) Employee Contributions**

**ATLANTA** – The U.S. Department of Labor has sued bankrupt D&S Consulting Engineers Inc., Decatur, Ala., and an executive for failing to forward \$41,103.65 and timely remit employee contributions to the company’s 401(k) plan and to separate assets of the plan from those of the company.

“The Labor Department will aggressively enforce the law to protect the retirement funds of this nation’s hardworking men and women,” said Howard Marsh, director of the Employee Benefits Security Administration’s (EBSA) Atlanta regional office. “Our legal action will ensure that these workers receive future benefits owed to them.”

The suit alleges that the company, Hulet M. Smith III and D&S violated the Employee Retirement Income Security Act (ERISA) when they failed to forward employee contributions to the 401(k) between January and March 2002. They also allegedly failed to timely remit contributions withheld from employees’ paychecks to the 401(k) plan starting in January 2000 and December 2001. The suit also claims that plan contributions were not held in a trust and were used for purposes other than to pay benefits. At the time of the violations, Smith was an officer of the company and a member of the plan’s administrative committee.

The suit seeks to require the defendants to repay to the plan any losses with interest and to permanently bar them from service to any plan governed by ERISA. The department also asks the court to appoint a successor fiduciary to manage the plan.

D&S Consulting, which filed for Chapter 11 bankruptcy, was an engineering and consulting firm. The 401(k) covered as many as 50 participants and had \$1,145,672 in assets as of Dec.31, 2003.

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 program requires employers to correct violations of the law, 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).

The suit, filed in the federal district court in Huntsville, Ala., resulted from an investigation conducted by EBSA’s Atlanta regional office. In fiscal year 2003, EBSA achieved record monetary results totaling \$1.4 billion for retirement, 401(k), health and other programs. Employers and workers can reach the Atlanta office at (404) 562-2156 or through EBSA’s toll-free number, **1-866-444-EBSA (3272)**, for help with problems relating to private-sector retirement and health plans.

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(Chao v. D&S Consulting Engineers, Inc.)  
Civil Action No. 5:05-cv-722

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