

# News Release



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## **Labor Department Recovers Employee Contributions to Retirement And Health Plans of West Des Moines, Iowa Company**

**KANSAS CITY** – The U.S. Department of Labor obtained a consent judgment on May 7 ordering the president of bankrupt West Des Moines based-Spain Electric, Inc. to repay \$32,174.54 to the company's pension and health plans for failing to forward to the plans contributions withheld from employees' wages.

Under the judgment, Daniel P. Spain, the plans' fiduciary, also was permanently barred from dealing with any retirement or welfare plan covered by the Employee Retirement Income Security Act (ERISA). He agreed to repay \$3,940 directly to specific individuals in the health plan. The judgment also ordered Spain to use \$28,233.82 from his individual account balance in the 401(k) plan to repay the losses of other plan participants.

Spain failed to segregate employees' 401(k) plan contributions from the company's general operating assets during the period of March 7, 2001 to June 20, 2001. From Oct. 1, 2001 to Feb. 2002, health plan deductions were not forwarded for payment of the insurance premiums causing the insurance company to cancel coverage.

"Despite the financial hardships of employers, the law clearly protects employee contributions by requiring that they be forwarded to plans for holding in trust to pay promised benefits. The outcome of this case should make these plans whole," said Gregory Egan, director of the department's Kansas City Regional Office of the Employee Benefits Security Administration (EBSA), which investigated the case.

The retirement plan had 52 participants and assets totaling \$384,355.07 as of Dec. 31, 2001. Employees of Gano Electric, which Spain and his wife bought in 1997, also were covered by the plans. The original lawsuit was filed on Jan. 16, 2003 in federal district court in the southern district of Iowa in Des Moines.

Egan noted that 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](http://www.dol.gov/ebsa).

Employers and workers with questions or concerns regarding their private-sector pension and health plans can contact the EBSA regional office in Kansas City for help at 1-816-426-5131 or EBSA's toll free number, 1-866-444-EBSA (3272).

(Chao v. Daniel P. Spain)  
Civil Action # 4:03-CV-90021

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