

News Release



U.S. Department of Labor
Office of Public Affairs
Chicago, Ill.
Release Number 232

For Immediate Release
Date: May 19, 2003
Contact: Rita Ford
Phone: (202) 693-8671

Labor Department Sues Minnesota Company and Officials for Failing to Forward Employee Contributions to 401(k) Plan

MINNEAPOLIS, Minn. —The U.S. Department of Labor sued Online Data, Incorporated, of Eagan, Minn., and two company officials on May 16, 2003 for failing to remit contributions, withheld from employees' paychecks, to the corporation's 401(k) profit sharing plan, and commingling these contributions with the corporation's assets.

"This action sends a strong message that the Labor Department will not tolerate the misuse of plan money and will take action to return the assets to workers," said Gregory Egan, director of the department's Kansas City regional office of the Employee Benefits Security Administration (EBSA), which investigated the case.

The suit alleges that Richard Benson, company President and a Plan trustee, as well as Sally Benson, a company employee and a trustee, failed to remit employee contributions to the plan from July 1999 to October 2001. The defendants' failure to segregate the corporation's and the plan's assets and to administer the plan solely in the interests of the participants and beneficiaries are violations of the Employee Retirement Income Security Act.

The suit seeks to have the defendants restore all losses, plus interest, to the plan; offset their individual accounts, and correct any prohibited transactions for which they are liable, including forfeiture of any profits received from the transaction.

Online is a subchapter S corporation that provides database services to magazine publishers. The 401(k) profit sharing plan was established on June 1, 1996. The Plan had 14 participants and \$49,582 in assets as of December 31, 2002.

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 applicable excise taxes. For more information about the VFCP see www.dol.gov/ebsa.

The suit was filed in the federal district court in Minneapolis. Employers and workers can reach the Kansas City regional office at 816-426-5131 or EBSA's toll free number, 1-866-444-EBSA (3272) for help with problems relating to private-sector pension and health plans.

###

(Chao v. Online Data, Incorporated)
Civil Action No. 03-3198-DWF/SRN