

News Release



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U.S. Department of Labor Sues to Restore More Than \$800,000 to New Jersey 401(k) Plan

NEW YORK—The U.S. Labor Department sued the fiduciaries of the 401(k) plan of the bankrupt Standard Automotive Corporation, headquartered in Hillsborough Township, N.J., for alleged misuse of more than \$800,000 in plan assets to pay improper legal expenses.

“Workers are counting on these funds for their retirement and we are doing everything we can to help them,” said Secretary of Labor Elaine L. Chao. “Protecting workers’ benefits is a top priority for us; last year the department achieved record monetary results totaling \$3.1 billion for retirement, 401(k), health and other programs.”

The Labor Department lawsuit alleges fiduciaries Anthony Scialabba and Morton Batt, and John E. Elliott II, chairman of the board of directors of the corporation, violated the Employee Retirement Income Security Act (ERISA). The defendants allegedly allowed over \$800,000 to be used to pay the law firm Anthony L. Scialabba and Associates for legal services that were improper, unnecessary and unreasonably costly given the level of plan assets.

According to the suit, Scialabba approved approximately one-half of the payments by the plan for legal services provided by his firm at various times from September 2001 to July 2003, without obtaining approval of the board of directors of Standard Automotive. After Scialabba resigned in December 2003, Batt approved payment of the balance of the \$800,000 and retained Scialabba’s law firm as special counsel to the plan. Elliott hired both Scialabba and then Batt as trustee of the plan.

The corporation, a holding company for manufacturers of components for the trucking and aerospace industries, filed for bankruptcy in March 2002. As of January 2005, the plan had \$2,520,316 in assets.

The Labor Department is seeking to restore the improperly removed funds, along with interest, and to bar Scialabba from serving as a fiduciary or service provider to an ERISA-covered plan in the future.

Employers with similar problems, who are not yet the subject of an EBSA investigation, may be eligible to participate in the department’s Voluntary Fiduciary Correction Program (VFCP). Participation in the VFCP 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, visit www.dol.gov/ebsa.

Employers and workers can reach EBSA’s New York regional office at (212) 607-8600 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. Scialabba)
Civil Action No. 1:05-cv-3732

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