

News Release



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Labor Department Obtains Order Barring Former Plan Trustee From Fiduciary Service

PORTLAND, Ore. -- The U. S. Department of Labor has obtained a consent order permanently barring Gary Kirkland, former trustee of the 401(k) and health plans of the Office and Professional Employees International Union in Portland, from future service as a fiduciary to any plan governed by the Employee Retirement Income Security Act (ERISA). The court order resolves a lawsuit involving risky investments authorized by Kirkland and other trustees with Capital Consultants LLC.

"Our legal action protects the hardworking union members of the Professional Employees plans and ensures that other plans do not fall victim to such risky investments," said Francis Clisham, director of the San Francisco regional office of the Employee Benefits Security Administration.

Capital Consultants was a registered investment manager that provided investment services to more than 60 clients, primarily union-sponsored pension and health plans, governed by federal employee benefits law. Since 2002, the department has obtained permanent bars against 32 trustees of 34 union plans in Arizona, California, Colorado, Idaho, Minnesota, Nevada, Ohio, Oregon, and Utah for authorizing imprudent investments through Capital Consultants. Through the efforts of the Labor Department, its court-appointed receiver and private settlements, more than \$290 million has been recovered for clients that invested with Capital Consultants.

The Labor Department's lawsuit, filed in U. S. District Court for the District of Oregon in Portland, alleged that Kirkland and the other trustees violated ERISA by imprudently authorizing a series of risky private placement investments of plan assets managed by CCL, including loans to Wilshire Credit Corporation. In addition, Kirkland was charged with self-dealing for accepting substantial gratuities from CCL, including trips.

In 2002, Kirkland and other plan trustees agreed to partial settlements to resolve a private lawsuit providing for restoration of \$475,000 to the 401(k) and \$478,000 to the health and welfare plan by the plans' fiduciary liability insurance carriers.

The Labor Department's Employee Benefits Security Administration (EBSA) last year achieved record monetary results totaling \$3.1 billion in retirement, 401(k), health and other benefits for American workers.

EBSA's San Francisco regional office investigated this case. Employers and workers can contact the San Francisco office at 415-975-4600 or EBSA's toll-free number, **1-866-444-3272**, for help with problems relating to private-sector health and pension plans.

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(Chao v. Kirkland)
Civil Action Docket No. 02-441-HA

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