

News Release



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Monroe, Mich., Firm Agrees To Restore Delinquent Contributions to 401(k) Plan

DETROIT -- The U.S. Department of Labor has recovered \$12,378.60 in principle and interest for delinquent contributions owed to the Fox Berry Inc. 401(k) plan, resolving a suit filed in Federal District Court in Detroit against the Monroe, Mich., firm. In addition to the restitution, the court appointed an independent fiduciary to manage the assets of the retirement plan.

“The department will act when plan fiduciaries fail to carry out their duty to protect the retirement plan assets held on behalf of participants,” said Joseph Menez, director of the department’s Cincinnati regional office of the Employee Benefits Security Administration (EBSA).

The suit, filed against Fox Berry Inc., as successor to Foxberry Group Inc., and their president, Thomas L. Fox, alleged violations of the Employee Retirement Income Security Act (ERISA). Fox failed to remit employee contributions to the 401(k) plan from January 2000 through December 2002 and transferred assets from one custodian of the plan to another in 2000. The vested account balances of former employees were held in a forfeiture account. In 2003, the suit charges, Fox instructed the plan custodian to liquidate the plan, convert the forfeiture account to cash and remit the cash to Foxberry Group. The funds were then transferred to Fox Berry and used for general operating expenses, in violation of ERISA.

The suit resulted from an investigation conducted by the Detroit district office of EBSA’s Cincinnati regional office. Employers and workers can reach the Cincinnati regional office at (859) 578-4680 or through EBSA’s toll-free number, 1-866-444-EBSA (3272), for help with problems relating to private-sector retirement and health plans. In fiscal year 2004, EBSA achieved record monetary results of \$3.1 billion related to the pension, 401(k), health and other benefits of millions of American workers and their families.

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(Chao v. Fox Berry, Inc.)
Civil Action No. 05-70926

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