

# News Release



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## **Labor Department Sues Arizona Corporation and CEO To Restore Delinquent Contributions**

**PHOENIX, Ariz.** -- The U.S. Department of Labor sued DMT Engineering, Inc. and Ductmole Inc., both of Phoenix, Ariz., and the companies' chief executive officer for failing to timely remit employee contributions to Ductmole Inc.'s Simple IRA plan and to segregate the contributions from the general operating assets of the companies.

"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 Billy Beaver, director of the department's Los Angeles regional office of the Employee Benefits Security Administration (EBSA), which investigated the case.

The lawsuit, filed in federal district court in Phoenix, alleges that the companies and CEO Saul Trevizo violated the Employee Retirement Income Security Act (ERISA) when they failed to timely remit to the plan \$12,779 in employee contributions from August 2000 to July 2001 and commingled the contributions with the companies' general operating assets.

Trevizo is the fiduciary of Ductmole's SIMPLE IRA plan. Trevizo's spouse, Mirna, also is named as a defendant to ensure that the plan is fully compensated since their assets are held as community property.

The suit seeks to require DMT Engineering, Ductmole and Saul Trevizo to restore to the plan all losses plus interest and correct the prohibited transactions, appoint an independent fiduciary to distribute the assets to participants and beneficiaries and terminate the plan and permanently bar DMT Engineering, Ductmole and Trevizo from serving as fiduciaries to any plan covered by ERISA. As of February 2002, Trevizo had restored \$1,500 to the plan.

DMT Engineering and Ductmole were contracting businesses that installed underground fiber optics and cables. DMT Engineering ceased doing business in 2003. Ductmole ceased doing business when DMT purchased its assets in 2001. The plan, which DMT Engineering acquired after Ductmole's closure, had eight participants and \$6,502 in assets as of March 2004.

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).

In fiscal year 2003, EBSA achieved record monetary results of \$1.4 billion related to the pension, 401(k), health and other benefits of millions of American workers and their families. Employers and workers can reach the Los Angeles regional office at (626) 229-1000 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. DMT Engineering, Inc.)  
Civil Action No. CV-04 1599 PHX FJM

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