

# News Release



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Contact: John M. Chavez  
Phone: (617) 565-2075

## **Trustee Agrees to Future Restitution to Defunct Rochester, N.Y., Company's Pension Plan** *Agreement Settles U.S. Labor Department Lawsuit*

**ROCHESTER** – Gary Ragan, trustee of the Flower City Insulation Savings and Investment Plan, has agreed, should he ever be able, to restore to the plan a total of \$19,282, plus interest, to settle a U.S. Department of Labor lawsuit. The suit alleged violations of the Employee Retirement Income Security Act (ERISA). Rochester-based Flower City Insulation has been defunct since 2002.

In a consent judgment, Ragan claims to be unable to make restitution at present, but agrees to do so in the future should he ever come into possession of more than \$10,000. The IRS also has a large settlement with Ragan which takes precedence over the Labor Department settlement. The consent judgment, filed simultaneously with the department's complaint in U.S. District Court for the Western District of New York, was signed on Oct. 25, 2005, by U.S. District Judge David G. Larimer.

According to James Benages, Boston regional director of the Labor Department's Employee Benefits Security Administration (EBSA), the department's complaint alleged that Ragan, as trustee of the Flower City Insulation Savings and Investment Plan, had breached his fiduciary duty by failing to make sure that employee contributions were actually forwarded to the plan from Jan. 1, 2000 through Dec. 31, 2001. The contributions, withheld from employee paychecks, were instead used by the company for other purposes.

"It is a clear requirement of the law," said Benages, "that plan assets, including all employee paycheck withholding contributions, must be used and invested only for the benefit of the plan's participants and beneficiaries. Any other use is strictly prohibited by ERISA."

The consent judgment also permanently prohibits Ragan from future violations of ERISA and from serving as a fiduciary of any other ERISA-covered employee benefit plan. Should he ever make restitution, the final amount will include both pre- and post-judgment interest.

This matter was investigated by the EBSA regional office in Boston and the court case was handled by the Labor Department's Regional Solicitor's Office in New York. In fiscal year 2004, EBSA achieved record monetary results of \$3.1 billion related to pension, 401(k), health and other benefits of millions of American workers and their families. Employers and workers can contact the Boston regional office at 617-565-9600. Help with problems relating to private-sector retirement and health plans can also be obtained by calling EBSA's toll free number at 1-866-444-EBSA (3272).

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(Chao v Flower City Insulation Savings and Investment Plan and Gary Ragan)  
Civil Action Number: 05-CV-6554

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