

# News Release



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## **Labor Department Sues Trustee of Wisconsin 401(k) Plan Over Delinquent Employee Contributions**

**CHICAGO, Ill.**—The U. S. Department of Labor filed a lawsuit on Oct. 2, 2003, seeking to restore losses suffered by the ONIT 401(k) plan in Madison, Wisc. when the plan trustee failed to forward employee contributions to the plan and retained plan assets with those of the computer technology firm.

ONIT L.L.C. was owned by defendant Christopher Brian Cook until the firm ceased operating on March 27, 2003 due to financial difficulties. Cook filed for Chapter 7 personal bankruptcy on Feb. 27, 2003. The plan allowed employees to have 401(k) contributions withheld from their paychecks and employer contribution. As of Dec. 31, 2000, the plan had \$107,840 in assets and covered 48 participants.

The department is seeking a court order to require Cook to repay all losses with interest, to offset his 401(k) account to repay any losses, to undo any transactions prohibited by law and to return illegal profits received by him. The suit also seeks to permanently bar him from serving any plan governed by the Employee Retirement Income Security Act (ERISA) in the future.

“Trustees of a 401(k) plan have a responsibility to ensure that the assets of the plan are used solely to benefit participants. One of the most important is putting money from workers’ wages into their 401(k) accounts on time,” said Ken Bazar, director of the Chicago regional office of the Employee Benefits Security Administration (EBSA) that investigated the case.

Bazar noted that employers with similar problems, who are not yet the subject of an investigation by the EBSA, may be eligible to participate in the department's Voluntary Fiduciary Correction Program (VFCP). Participation in the program 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).

Employers and workers can contact the regional office at (312) 353-0900 or EBSA’s toll free number, 1-866-444-3272, for help with problems relating to private-sector pension and health plans.

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(Chao v Cook)  
Civil Action No. 03-C-0551-C