

News Release



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U.S. Labor Department Sues Trustee of Minnesota 401(k) Over Delinquent Employee Contributions and Loan Repayments

MINNEAPOLIS, Minn. – The U.S. Department of Labor sued the former trustee of the 401(k) plan of defunct Red Wing Foods, Inc. in Minneapolis, Minn., for failure to forward to the plan all contributions and loan repayments deducted from employees' paychecks and retaining those assets in the corporate account of the company.

"The law states that plan fiduciaries have a responsibility to manage the money set aside in retirement plans for the benefit of employees and their families," said Steven Eischen, director of the department's Kansas City regional office of the Employee Benefits Security Administration (EBSA). "Our legal action is designed to restore money to pay future benefits to these plan participants."

The lawsuit alleges that trustee David A. Thompson violated the Employee Retirement Income Security Act when he failed to remit the full amount of employee contributions and loan repayments to the plan during the period Jan. 17 and March 28, 2003. In addition, he commingled plan assets with those of the company and used the money for his own benefit.

The suit seeks to require Thompson to restore to the plan all losses with interest and correct any transactions prohibited by law. Red Wing served as the plan administrator until it ceased business operations in June 2003. Thompson, the sole owner of the grocery wholesaler, terminated the plan on May 15, 2003.

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.

The case, filed in federal district court in Minneapolis, resulted from an investigation conducted by the EBSA's Kansas City regional office. 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. Employers and workers can contact the regional office at (816) 426-5131 or EBSA's toll free number, **1-866-444-EBSA (3272)**, for help with problems relating to private-sector pension and health plans.

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(Chao v. Thompson) Civil Action No. 04-CV-4646

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