

COMPANY TO RESTORE MORE THAN \$500,000 TO RETIREMENT PLAN



Explore General, Inc., a now-defunct construction company based in Fresno, CA, has been ordered to restore over 500,000 dollars to the company's 401(k) profit-sharing retirement plan. The judgment and order, which were entered in the U.S. District Court for the Eastern District of California, also pertain to the man who was owner and president of Explore General at the time of the alleged violations. The judgment and order stem from a lawsuit filed by the U.S. Department of Labor's Employee Benefits Security Administration. The administration had initiated an investigation into the company and owner reportedly failing to pay required fringe benefits to the plan and violating fiduciary duties under the Employee Retirement Income Security Act by not administering the plan in the best interest of participating workers. A judge ruled that Explore General was required to pay its employees an hourly prevailing wage rate, including a fringe benefit for every participant by way of contributions to the retirement, when the company was contracted for work on projects that were being financed by government agencies. These agencies paid the company in full for the work completed, including the fringe benefit amounts, and Explore General certified that it was sending said fringe benefits to the plan. The money, however, was used instead for general operating expenses, and over 300,000 dollars was not remitted to the retirement plan. The judge's order includes the restoration of 519,601 dollars to the



401(k) plan and a requirement for the company to restore lost earnings for the plan. The Employee Retirement Income Security Act of 1974 is a law intended to provide protection for individuals participating in voluntarily established pension and health plans in private industry. It requires that plans supply plan information to participants detailing plan features and funding. The Act further provides fiduciary responsibilities for people who manage and control plan assets, requires plans to offer a complaint and appeals process for participants to receive benefits from their plans, and allows participants the right to sue for benefits or any possible breaches of fiduciary duties. The Act does not generally cover group health plans established or maintained by government businesses, churches for employees or plans maintained only for complying with applicable workers' compensation, unemployment or disability laws. Plans maintained outside of the U.S. for the benefit of nonresident aliens and unfunded excess benefit plans are likewise not covered. "Retirement savings are a vital part of ensuring a steady income after we leave the workforce, which is a key reason that Congress chose to give them special protections," Phyllis C. Borzi, Assistant Secretary of Labor for Employee Benefits Security, said in a press release. "Unfortunately, the individuals entrusted with protecting this plan violated those safeguards." The case involving Explore General, Inc. and its former owner/president is part of the Employee Benefits Security Administration's national enforcement initiative to protect workers' pension and health benefit plans. The Department of Labor's regional solicitor in San Francisco, CA, litigated the case.