

# DOL Sues Profit-Sharing Retirement Plan of California Consultant

The Department of Labor alleges an environmental consultant abandoned responsibility for its profit-sharing retirement plan in the late 1990s.

Reported by [NOAH ZUSS](#)

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A California environmental consultant is [alleged by the Department of Labor](#) to have neglected to manage or administer the company profit-sharing plan since the late 1990s or early 2000s, effectively barring distribution of participants' retirement assets. The complaint, *Su v. Environmental Instrumentation Co. et al*, was filed on Friday in U.S. District Court for the Northern District of California.

The DOL, in the name of Secretary of Labor Julie Su, asked the court to appoint an independent fiduciary for the plan to be given discretionary authority to administer the retirement plan through its termination and the distribution of plan assets to participants and beneficiaries and for an order to obtain other appropriate equitable relief to redress violations and enforce provisions of the Employee Retirement Income Security Act.

Due to the neglect by the plan sponsor, "Retirement Plan participants may not access their account balances to reinvest them in other tax qualified retirement savings vehicles before retirement, to draw them down upon retirement, or for any other purpose," the complaint states. "As a direct and proximate result of the breaches and violations set forth in [the complaint], the Secretary [of Labor] is entitled to such equitable or remedial relief as the Court may deem appropriate, including removal of such fiduciary, under ERISA."

The complaint brought two counts of ERISA violations: failing to uphold the duty of prudence to participants and failure to act in the interests of participants and beneficiaries of the retirement plan by distributing benefits and defraying reasonable expenses of retirement plan administration.

The Environmental Instrumentation Co. Profit Sharing Plan went into effect in 1988, the complaint shows. In its 1997 Form 5500, the plan represented it ended the year with four participants, the plaintiffs wrote in the complaint.

"EIC has not performed any services for the Retirement Plan since around the late 1990s or early 2000s; thus, no Retirement Plan participant has been able to receive distributions since around that time," the complaint states. "The Retirement Plan has not filed a Form 5500 with the Department of Labor since around 1998."

Although participant monies are inaccessible to the rightful asset owners, the plan held \$144,168.60 in assets as of December 20, 2023, the complaint shows. The retirement plan has been a shareholder of the Ariel Investments Fund Investor Class since about December 2009, the court record shows.

"The Retirement Plan's Ariel Fund portfolio worth around \$144,168.60 may not be redeemed and distributed to participants without a directive from U.S. Bank," the complaint states. "The Retirement Plan's current custodian, U.S. Bank, has expressed to the department that it will not authorize distributions to plan participants without instructions from a court-appointed fiduciary."

U.S. Bancorp Fund Services has been the plan's custodian since about 1997, according to the complaint.

"Attention to these kinds of basic allegations transcends any political aspects of the DOL's responsibilities, and directly implicate the need for the DOL to protect plan participants and beneficiaries from alleged impropriety

involving bedrock principles,” explains Drew Oringer, a partner and general counsel at the Wagner Law Group, which was not involved in the litigation. “It is not surprising to me that allegations of nonpayment of benefits and use of plan assets to run the plan sponsors business would spur the DOL to act.”

Environmental Instrumentation Co. is the parent and operating company of Environmental Instruments, a consultant based in Concord, California. EIC was incorporated in California in 1986, but had its California state Franchise Tax Board Status suspended on or around August 1, 2002, and the entity has not operated in California “since around 2002,” the complaint states.

The DOL brought separate lawsuits against the profit sharing retirement plans for a [defunct Michigan telemarketing company](#) and a [professional sports agency](#) earlier this year.

Environmental Instruments could not be reached for comment, nor was a working website found.

The DOL is represented by U.S. Solicitor of Labor Seema Nanda, along with Rachel Uemoto, trial attorney; Marc Pilotin, regional solicitor; and Laura Bremer, ERISA counsel.

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**Tags**

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