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Kari Kennedy v. DuPont: Ask Not What Your QDRO Can Do for You

#21360

SUPREME COURT RESOLVES CONFLICT BETWEEN BENEFICIARY DESIGNATION AND DIVORCE DECREE

January 28, 2009

On January 26, 2009, the Supreme Court unanimously held that the administrator of the DuPont Savings and Investment Plan (the "Plan" or the "SIP") properly paid death benefits under the Plan according to a deceased participant's beneficiary designation, even though the designated beneficiary was the participant's ex-wife and their divorce decree stated that she gave up her right to benefits under the SIP. Together with lawyers from DuPont and Kilpatrick Stockton, Covington & Burling represented the Plan in this case, *Kennedy v. Plan Administrator for DuPont Savings and Investment Plan*.

BACKGROUND

As a DuPont employee, William Kennedy participated in the SIP, DuPont's 401(k) plan. In 1974, he designated his wife, Liv Kennedy, as his beneficiary under the SIP.

In 1994, William and Liv divorced. The divorce decree stated that Liv gave up any right to pension benefits that accrued by reason of William's employment.

After the divorce, William changed his beneficiary designation under DuPont's defined benefit pension plan, but he did not change his beneficiary designation under the SIP. In 2001, William died without having remarried or revoking his 1974 beneficiary designation under the SIP.

The SIP required that death benefits be paid to the beneficiary designated by the participant on an authorized beneficiary designation form. The Plan provided that if the participant did not designate a beneficiary, or no designated beneficiary survived the participant, the default beneficiary was the participant's spouse or, if the participant was not married at the time of his death, his estate. The Plan further provided that a beneficiary could waive her right to benefits by filing a qualified disclaimer that satisfied the requirements of Section 2518 of the Internal Revenue Code. A qualified disclaimer allows a beneficiary to give up any right to a benefit without being deemed to have made a gift for federal gift tax purposes.

Because William neither remarried nor changed his beneficiary designation, and because the 1994 divorce decree was not a qualified disclaimer, the Plan administrator paid William's death benefits to Liv—the beneficiary named on William's 1974 beneficiary designation form. William's estate sued the Plan, arguing that the 1994 divorce decree nullified William's 1974 beneficiary designation and that the proper beneficiary was therefore William's estate.

KENNEDY TAKE-AWAYS

- ✓ Plan sponsors should review plan and SPD provisions governing beneficiary designations to ensure that the designation procedures and other rules are clearly communicated.
- ✓ Plan sponsors should consider adding or updating provisions addressing what happens to beneficiary designations upon divorce, and provisions for a qualified disclaimer.

HOLDING

The Court held that, under ERISA's "plan documents" rule, the Plan administrator was required to follow William's 1974 beneficiary designation, even though it arguably conflicted with the 1994 divorce decree. In so holding, the Court emphasized two important facts:

1. Under the SIP, William could have changed his beneficiary designation at any time during the seven years between the divorce and his death, but he did not file the form required by the Plan.

2. Under the SIP, Liv could have waived her right to receive benefits by filing a qualified disclaimer, but she never did so.

Although the Court held that it was appropriate to follow the Plan documents in this case, the Court also held that ERISA's anti-alienation provision does not prohibit a beneficiary's waiver of plan benefits, even if the waiver is not specifically permitted by the statute. Thus, if not prohibited by a plan's terms, the plan's administrator could be required to give effect to a divorce settlement in which an ex-spouse gives up her right to death benefits—even if the divorce settlement is not a QDRO. The Court declined to address a case where the plan documents do not allow a beneficiary to waive her right to benefits.

IMPLICATIONS FOR PLAN SPONSORS

The *Kennedy* decision upholds a plan sponsor's authority to design its plan and to follow the plan's terms. The case resolves a circuit split over whether a purported waiver in a divorce decree overrides a beneficiary designation filed in accordance with the plan's terms. In addition, because the "plan documents" rule applies both to pension plans and welfare plans, *Kennedy* applies to life insurance and other welfare plans, which are often faced with disputes like the one in *Kennedy*. Insured welfare plans are subject to state insurance laws, however.

The Court's discussion of waivers suggests that, absent appropriate plan provisions, plans may not altogether disregard divorce decrees or settlements that do not satisfy the requirements of a QDRO. The Court emphasized that the SIP's beneficiary designation provisions were straightforward and fair, and provided ample opportunity for William and Liv to do what William's estate argued they had intended to do: (1) William could have changed his beneficiary designation by filing the required form, and (2) Liv could have waived her right to benefits by filing a qualified disclaimer. The Court left open the question of how it would have ruled if the SIP's procedures for designating a beneficiary had been less clear or the SIP did not allow for qualified disclaimers.

In light of *Kennedy*, plan sponsors might wish to review their plans' beneficiary designation provisions, and the descriptions of those provisions in SPDs and other documents, and to consider whether any changes are appropriate. For example, these documents might be revised—

- To clarify provisions governing how and when beneficiary designations may be made or changed, and to make clear that instructions that are not provided in accordance with those provisions will be disregarded;

- To state clearly what effect, if any, separation, divorce, or a divorce decree that is not a QDRO will have on a beneficiary designation; and

- To add a disclaimer provision that meets the requirements of Section 2518 of the Internal Revenue Code.

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