

## Beneficiary Designation Disputes: Post-*Kennedy* Case Law Explores the Reach and Limits of the Plan Document Rule

Beneficiary designation disputes with respect to employee benefits are not uncommon and often present knotty and arcane analytical issues that carry with them the risk of the double payment of benefits and/or litigation. Accordingly, the US Supreme Court's decision in *Kennedy v. Plan Administrators for DuPont Savings and Investment Plan, et al.* (January 26, 2009) provided a welcome clarification that, other than as required by a qualified domestic relations order (QDRO), the plan administrator of an employee benefit plan governed by the Employee Retirement Income Security Act of 1974 (ERISA) must look to the documents that govern the plan to determine the beneficiary to whom a deceased participant's benefits must be paid.<sup>1</sup> This is known as the "plan document" rule.

Specifically, the Supreme Court applied the plan document rule to hold that, where a plan has an established procedure for a participant to designate, change, and revoke a beneficiary designation, an ex-spouse's waiver of benefits in a divorce decree that does not qualify as a QDRO does not terminate the ex-spouse's rights to the deceased participant's plan benefits when the ex-spouse is properly designated as the participant's beneficiary in accordance with the plan's procedures. In other words, the divorce decree did not override the benefit designation form.

Notwithstanding the apparent clarity that the plan document rule seems to provide, complex issues remain with respect to its application. This Update reviews decisions subsequent to *Kennedy* that highlight such issues and discusses lower court efforts to apply the plan document rule to resolve those issues.

### The Progeny of *Kennedy*

**Pre-Printed Beneficiary Designation Forms.** In many instances, a plan will have a default beneficiary designation, as well as a list of default contingent beneficiaries, thus establishing an ordering rule to determine, in the absence of a valid beneficiary designation by a participant, the party to whom benefits will be paid in the event of the participant's death. Recently, the US Court of Appeals for the Third Circuit held that a preprinted line on the beneficiary designation form naming the participant's estate as the final beneficiary, after the primary and contingent beneficiaries, was valid and that the estate, as the participant's designated beneficiary, was the proper party to which the benefits should be paid after the participant's primary and contingent beneficiaries waived their rights to those benefits. In that case, the ordering rule in the plan document would have made the participant's surviving parent the party to whom the benefits would have been paid.

The surviving parent argued that the preprinted line on the beneficiary designation form was not the participant's express beneficiary designation, thus requiring application of the ordering rule in the plan document. The Third Circuit rejected the parent's argument and held that the preprinted designation of the estate on the form was valid. Although in this case the preprinted line on the beneficiary designation form yielded a result different from the plan's ordering rule, plan sponsors could avoid such an issue by designing any preprinted beneficiary designations to reflect the ordering rule of the related plan.

**Divorce Decrees.** As noted above, in *Kennedy*, the Supreme Court held that a divorce decree that did not constitute a QDRO did not invalidate a participant's beneficiary designation. The effect of this will be to make plan fiduciaries focus even more closely on what is often a close call — whether a divorce decree constitutes a QDRO. Two cases from the District Court for the Eastern District of Michigan emphasize this point.

In one case, the district court held that a divorce decree did not constitute a QDRO so that the beneficiary designation controlled in determining the benefit for life insurance benefits. In that case, the court noted that the divorce decree could not constitute a QDRO because the decree neither designated an alternate payee nor the plan(s) to which it applied. In another case before the same court, the divorce decree required the participant to maintain the ex-spouse as the beneficiary on the participant's "Life Insurance Policy" for so long as the spousal support obligation continued. Noting that the participant had only one life insurance policy, so that there was no question as to which plan the divorce decree applied, the court found that the divorce decree constituted a QDRO and, therefore, superseded the pre-divorce beneficiary designation executed by the participant which named his son as the beneficiary. In light of these cases, plan fiduciaries will need to consider the lengths to which a court may go to find that a divorce decree is a QDRO and to take care in making their own determinations as to whether a divorce decree constitutes a QDRO, particularly where a beneficiary designation exists.

#### **Rights of Third Parties After Payments of Benefits.**

In a footnote in the *Kennedy* case, the Supreme Court stated that it was not commenting on whether another party might have a contractual claim against the ex-spouse for the benefit proceeds *after* the proceeds were distributed from the plan. While district courts in Michigan have noted that proceeds are properly payable to the designated beneficiary in accordance with the plan document rule, those courts have also recognized that the plan document rule does not preclude a contractual claim or constructive trust theory from preventing the payee from retaining such proceeds after the proceeds are distributed from the plan. While interesting, the rights of third parties to

benefit proceeds *after* the proceeds are paid from an ERISA-governed plan are unlikely to be relevant to plan fiduciaries. Plan fiduciaries should remember that any contractual and state rights of third parties are separate issues from the plan fiduciary's obligation to pay benefits in accordance with the plan documents as required by ERISA.

**Scope of the Plan Document Rule.** In the *Kennedy* case, the Supreme Court stated in a footnote, that it has not addressed "a situation in which the plan documents provide no means for a beneficiary to renounce an interest in benefits." Subsequent cases have not always been clear regarding whether the plans at issue had specific procedures for a beneficiary to renounce the beneficiary's interest. Prior to *Kennedy*, a district court in Nebraska had granted a plaintiff's motion for summary judgment, finding that the defendants had abused their discretion in distributing life insurance proceeds to a participant's ex-spouse. The court denied the defendants motion to reconsider the decision in light of *Kennedy*, citing the footnote and distinguishing *Kennedy* on the grounds that the plan at issue had no procedure by which the beneficiary could renounce the beneficiary's interest. This case illustrates that some courts may limit the application of the plan document rule depending on how narrowly they interpret the Supreme Court's decision in *Kennedy*.

#### **Plan Documents & Procedures**

The *Kennedy* case and its progeny underscore the importance of having clear plan provisions and procedures relating to beneficiary designations and of clearly communicating those provisions and procedures to participants so as to protect plan fiduciaries from liability for paying plan benefits to the wrong party. Although court decisions applying *Kennedy* in the context of beneficiary designations have most often involved the payment of life insurance proceeds, there is no reason to believe that the manner in which the plan document rule has been applied in those cases would differ if applied in cases involving other types of ERISA plans, including pension plans.

Beneficiary disputes can arise in a number of situations, particularly in the case of divorce. Regardless of whether the plan terms and procedures automatically remove an ex-spouse as a beneficiary following a

divorce decree or place the burden on the participant to remove the ex-spouse as a beneficiary by executing a new beneficiary designation, the summary plan description, beneficiary designation form and instructions, as well as the plan's QDRO procedures, should clearly communicate to plan participants, and potential claimants, the effect of a divorce on a preexisting beneficiary designation. In addition to protecting plan fiduciaries, clear communication may serve to prevent such disputes and related legal actions from arising in the first place.

*For more information about the issues raised in this Client Update, please contact the author, listed below, or your regular Mayer Brown Employee Benefits & Executive Compensation lawyer. To learn more about our Employment & Benefits practice visit us at <http://www.mayerbrown.com/employmentbenefits>. For more information on Mayer Brown, please visit [www.mayerbrown.com](http://www.mayerbrown.com).*

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## Endnote

- <sup>1</sup> For more information, see Mayer Brown's February 13, 2009, Client Alert, "Supreme Court Holds That Beneficiary is Determined In Accordance With Plan Document," available at <http://www.mayerbrown.com/publications/article.asp?id=6144&nid=6>.

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