February 13, 2009

## Supreme Court Holds That Beneficiary is Determined In Accordance With Plan Document

Areas of Interest

**Employee Benefits & Executive Compensation**

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On January 26, 2009, the U.S. Supreme Court, in *Kennedy v. Plan Administrator for DuPont Savings and Investment Plan* (U.S., No. 07-636), unanimously ruled that a plan correctly distributed retirement benefits to a participant's ex-spouse who was named as the participant's beneficiary under the plan, despite her purported waiver of the benefits in a divorce decree. This decision resolved a longstanding split among the circuit courts on two key issues:

- Whether a divorced spouse's waiver of his or her plan benefits pursuant to a divorce decree violates the anti-assignment and anti-alienation prohibitions of the Employee Retirement Income Security Act of 1974, as amended (ERISA); and
- Whether a beneficiary's waiver of benefits is effective if it is inconsistent with the plan document.

### Background

In *Kennedy*, the participant had filed a beneficiary form naming his then-current spouse as his beneficiary. The participant and his spouse were subsequently divorced and the ex-spouse purported to waive her benefits under the plan pursuant to the divorce decree. The divorce decree did not satisfy the requirements of a qualified domestic relations order (QDRO) for purposes of ERISA and was never filed with the plan as a QDRO. In addition, the participant did not change his beneficiary designation under the plan following the divorce. Thus, upon his death, his ex-spouse was the named beneficiary of his plan benefits and, consistent with that designation, the plan paid the participant's benefits to his ex-spouse. The participant's estate sued the plan, claiming that the estate was the rightful beneficiary because of the ex-spouse's waiver of her right to the benefits by virtue of the divorce decree. The district court found for the estate, but the Fifth Circuit Court of Appeals reversed, ruling that because the divorce decree did not constitute a QDRO, the ex-wife's waiver contained in the decree could not be given effect without violating the anti-assignment and anti-alienation provisions of ERISA. The Supreme Court affirmed the payment to the ex-spouse but did not follow the reasoning of the Fifth Circuit.

### Waiver of Pension Benefits—Is it an Assignment or an Alienation?

The Supreme Court held that a waiver of plan benefits made pursuant to a divorce decree, even if such divorce decree is not a QDRO, is not a violation of ERISA's anti-alienation and anti-assignment provisions. The Court rejected the Fifth Circuit's holding that such a waiver would constitute an "indirect assignment" of the beneficiary's rights under the plan to the next beneficiary in line, stating that such an interpretation of the term "assignment" was too broad for purposes of ERISA. Rather, the Court found that the waiver merely relinquished benefits and did not purport to assign any benefits. As support for its reasoning, the Court noted that this participant could change his beneficiary under the plan at any time prior to his death and, therefore, the ex-spouse could not have ensured that an assignment to the estate would have been effective even if that had been her intent. The Court further noted that the appellate court's broad interpretation of the term "assignment" would prohibit a waiver in other circumstances where it would be clearly permissible (e.g., a surviving spouse may waive a right to a surviving spouse pension). Finally, the

Court analogized ERISA's anti-alienation rules to spendthrift trusts. The Court noted that although interests under spendthrift trusts are unalienable and unassignable, a beneficiary of a spendthrift trust may decline an interest without violating such rules.

Thus, the Court concluded that a beneficiary under ERISA may waive his or her rights under a retirement plan without violating ERISA's anti-alienation and anti-assignment provisions. In reaching this conclusion, the Court also rejected the Fifth Circuit's position that a waiver of benefits can only be made pursuant to a QDRO. The Court noted that because a QDRO must affirmatively *create* a right for an alternate payee, a simple *waiver* of benefits cannot be effected through a QDRO. Therefore, the fact that the divorce decree was not a QDRO did not preclude the ex-spouse's waiver of her benefits.

**Importance of Plan Document Provisions**

After determining that the beneficiary was permitted to waive her benefits under the plan, the Court next turned to the issue of whether the waiver would be given effect. The Court held that, regardless of the validity of the waiver in the divorce decree, ERISA obligated the plan to distribute benefits in accordance with the plan document. The Court emphasized the importance under ERISA of compliance with the written plan document in order to ensure that participants and beneficiaries are able to receive, with the greatest ease and clarity possible, all rights and benefits under the plan, as well as to provide a means for employers to establish a uniform administrative structure to guide the processing of benefits. The Court noted that the plan document rule is designed to minimize the need for plan administrators to make subjective and often complex determinations about the effect of external documents or participant intent. In this case, the Court held that the beneficiary designation form naming the ex-spouse as the beneficiary was part of the "plan" document and that the plan administrator was obligated to pay the benefits in accordance with such documents.

**What Was Not Addressed**

The Supreme Court specifically left open the question of whether the participant's estate could bring an action against the ex-spouse to recover the plan benefits, assuming that the ex-spouse's waiver of benefits in the divorce decree was valid. This issue was addressed in a footnote in the opinion. The implication is that a prior agreement to forfeit funds may be enforceable after the plan distribution without violating ERISA on the theory that once the funds are distributed from the plan, they lose their ERISA protections and therefore would be subject to recovery based on a non-plan agreement.

If you would like more information about the foregoing, please contact the authors of this Client Alert, Debra B. Hoffman (+1 312 701 7219) and Christine S. Matott (+1 312 701 8571), or any other member of our Employee Benefits & Executive Compensation practice.

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