

ERISA & Employee Benefits Alert

New Supreme Court decision: plan administrator appropriately paid pension benefits to ex-wife, the designated beneficiary, despite language in divorce decree

February, 2009

By Katherine S. Somervell, Susan Olson, Abby Wool Landon

It's a common-enough scenario: a participant in an ERISA plan (any qualified retirement plan) names his spouse as the beneficiary of his pension plan. The parties subsequently divorce, and although the divorce decree purports to disclaim any interest the spouse may have in the pension, the participant fails to change his beneficiary designation. When the participant dies, how does the plan administrator know where to pay the pension funds?

Resolving a split among the circuits, the Supreme Court answered this question this week in *Kennedy v. Plan Administrator for DuPont Savings and Investment Plan*, 555 US ____ (January 26, 2009). Not surprisingly, the Court concluded that the plan administrator's responsibility is to comply with the terms of the plan document, which in this case meant paying the benefits in accordance with the beneficiary designation.

Why is this not surprising? Well, the Court has long-held that an ERISA plan is controlled by its documents, and that plan administrators must act in accordance with those documents. What confused the circuit courts, however, was language such as this in the Kennedys' divorce decree, which stated that Mrs. Kennedy "is ... divested of all right, title, interest, and claim in and to ... [a]ny and all sums ... the proceeds [from], and any other rights related to any ... retirement plan, pension plan, or like benefit program existing by reason of [Mr. Kennedy's] past or present or future employment." On its face, this would appear to divest Mrs. Kennedy of any interest she had in Mr. Kennedy's Savings and Investment Plan.

Enter ERISA's anti-alienation provision. Section 1056(d)(1) of ERISA expressly provides that pension benefits may not be "assigned" or "alienated." The exception to this provision is if the parties have entered into a Qualified Domestic Relations Order (QDRO), which has very specific requirements in order to be effective. Despite its apparently clear language, the Kennedys' divorce decree did not meet the requirements of a QDRO, and therefore did not qualify as a valid waiver of Mrs. Kennedy's rights under the Plan.

The Court emphasized that ERISA by its terms requires employee benefit plans to be established according to written instruments and that the plan administrator is obligated to act in accordance with the terms of those written instruments. 29 USC §1102, §1104. The DuPont Plan contained specific requirements for payment of plan benefits, changes of beneficiary designations, and QDROs. Because the divorce decree was not a valid QDRO and Mr. Kennedy did not take the appropriate steps to change his beneficiary

designation, the plan administrator appropriately paid benefits to Mrs. Kennedy as the named beneficiary.

Of interest is the Estate's argument that the plan administrator should have just filed an interpleader action with the court to determine appropriate disbursement of the pension funds. The Court rejected this suggestion, stating that by "giving a plan participant a clear set of instructions for making his own instructions clear, ERISA forecloses any justification for enquiries into nice expressions of intent, in favor of the virtues of adhering to an uncomplicated rule." The plan administrator will not be forced into litigation. It can rely on plan documents and records and then conform their distribution to the instructions found there.

TIPS FOR MOVING FORWARD

There are urgent take-home lessons for plan participants, employers and anyone participating in a domestic relations matter.

- Plan participants include anyone contributing to a 401(k) or other qualified plan. A plan participant wishing to (or required by court document to) change his or her beneficiary designation following a divorce, cannot rely solely on the divorce decree or judgment. Although you may be suffering from legal fee burnout, nonetheless you must hire competent counsel to prepare a QDRO that follows plan's requirements for changing beneficiary designations. In similar fashion, the terms of your estate planning documents are not going to govern the disposition of your plan assets. You should check with your estate planning lawyer to be sure that your beneficiary designation is consistent with your desired estate plan.
- For plan administrators, absent a participant's QDRO which complies with the plan requirements, you can proceed with peace of mind in paying out benefits according to the plan terms. Regardless of any extraneous arguments concerning the participant's intent.
- For employers, although ERISA's anti-alienation provision applies only to pension plans, the Court's emphasis on the clarity of plan language and procedures holds true for both pension and welfare benefit plans. If you wish to avoid protracted litigation (or any litigation at all) over employee beneficiary payouts, ensure (1) that the plan document clearly indicates how plan benefits will be paid out and provides specific steps for changing beneficiaries; and (2) that those requirements are communicated to the employees on a regular basis.