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## Supreme Court Refuses to Enforce Ex-Spouse's Waiver of Plan Benefit

The United States Supreme Court has resolved an issue that has long been a source of uncertainty for employers, plan administrators and executors. Who is the proper beneficiary when a plan participant's former spouse waives all rights to plan benefits under a divorce settlement, but the participant dies without revoking the designation of the former spouse as his or her plan beneficiary? The answer is, the former spouse. *Kennedy v. Plan Administrator for DuPont Savings and Investment Plan* (January 26, 2009).

In *Kennedy*, the Supreme Court clarified that the Employee Retirement Income Security Act of 1974 (ERISA) requires plan administrators to follow the directives of the plan document in distributing benefits, even if those directives contradict the terms of a divorce decree. In a unanimous opinion, the Court held that a former spouse's waiver of her interest in a participant's pension benefits through a divorce decree could not be given effect where the terms of the plan required the plan administrator to distribute the participant's benefit to the participant's designated beneficiary. Since the participant failed to revoke the designation of his former spouse as his beneficiary, the plan administrator was obligated to distribute benefits in accordance with that designation.

William Kennedy participated in his employer's ERISA-governed savings and investment plan (the "SIP"). The SIP provided that participants could designate a beneficiary or revoke such designation as prescribed by the plan administrator. The SIP also provided that if a participant died with no surviving spouse or designated beneficiary, benefits were to be distributed to the participant's estate. William designated his wife, Liv Kennedy, as his SIP beneficiary. William and Liv later divorced. Liv waived her interest in the SIP benefits through the couple's divorce decree. However, William never revoked his designation of Liv as his beneficiary under the SIP. Upon William's death, the plan administrator, relying on William's unrevoked beneficiary designation, paid William's SIP benefits to Liv. William's estate sued, alleging that because Liv waived her rights to SIP benefits through the divorce decree, the plan administrator's decision to distribute the benefits to Liv violated ERISA.

The U.S. District Court for the Eastern District of Texas granted summary judgment for the estate, holding that Liv's waiver of the SIP benefits was valid because it was explicit, voluntary, and made in good faith.

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On appeal, the U.S. Court of Appeals for the Fifth Circuit reversed the decision, holding that Liv's waiver constituted an assignment or alienation of her interest in the SIP benefits to the estate and thus could not be recognized.

Relying on a different rationale, the Supreme Court affirmed the Fifth Circuit's decision that the plan administrator correctly distributed the SIP benefits to Liv. The Court held that the plan administrator was not required to honor Liv's waiver, and that the plan administrator fulfilled its ERISA duty by paying the SIP benefits to Liv according to the plan's express terms. The Court relied on ERISA's mandate that a plan administrator must act solely in accordance with the plan documents. The Court found that in order for the plan to pay William's benefit to his estate rather than his former spouse, William was obligated to revoke or replace his designation of Liv. William failed to do so before he died. Thus, the Court concluded that the plan administrator acted in accordance with the terms of the plan by distributing benefits to Liv, who remained the designated beneficiary at the time of William's death.

**Hiscock & Barclay, LLP Observations.** The *Kennedy* decision clarifies that plan administrators are not required to investigate issues outside the plan when deciding how to distribute benefits. Therefore, even though payment of a benefit to a former spouse may not comport with the property settlement reached by a divorcing participant and his or her spouse, the plan administrator has no obligation to review the divorce settlement. Plan administrators must still follow the terms of a proper qualified domestic relations order ("QDRO") because all qualified plans contain directions authorizing distributions in accordance with a QDRO.

The decision also clarifies that a former spouse's waiver of her right to plan benefits will be effective only if it complies with the terms of the governing plan document. Plan administrators may wish to amend the portion of the plan's summary plan description relating to designation of beneficiaries to clearly state that participants must submit a new beneficiary designation if they seek to exclude a former spouse from receiving benefits. ■

*The principal authors of this Alert are Kathryn A. Lisandrelli and Raymond N. McCabe. Please contact Ms. Lisandrelli or Mr. McCabe or any member of our Labor and Employment Practice area if you have any questions about how this decision affects the administration of your qualified plans.*

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