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LEGAL ALERT

Legal Alert: Supreme Court Unanimously Adopts an "Uncomplicated Rule" - Plan Administrators Should Pay Benefits in Accordance with the Terms of the Plan

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ERISA typically has been a minefield for fiduciary compliance. This has been particularly true when a plan administrator must decide which of two competing claims should be paid when the plan participant is deceased. This week, the United States Supreme Court issued an "uncomplicated," bright line rule for plan administrators to follow in these situations. The Court held that a plan administrator meets its ERISA duty when it pays benefits according the plan documents. Specifically, the Court approved the payment by a plan administrator to the beneficiary named by the participant, despite the fact that the beneficiary was the former spouse of the participant who had waived her right to the benefits in a divorce decree. ERISA generally requires that a covered pension benefit plan "provide that benefits . . . under the plan may not be assigned or alienated." 29 U.S.C. §1056(d)(1). But there is a specific exception to this requirement for rights created under a Qualified Domestic Relations Order (QDRO). 29 U.S.C. §1056(d)(3). Notwithstanding this provision, many plan participants – and their attorneys – do not obtain QDROs. Instead, they often assume that language in their divorce decrees will suffice. *Kennedy v. Plan Administrator for Dupont Savings and Investment Plan*, No. 07-636 (U.S. January 26, 2009), once again proved the old adage about assumptions. *Kennedy* involved an employee of Dupont, which had a Savings and Investment Plan (SIP) governed by ERISA. Mr. Kennedy was a participant in the plan and named his wife, Liv Kennedy, as his beneficiary. He did not name a contingent beneficiary. Mr. Kennedy was also a participant in Dupont's Pension and Retirement Plan (Pension Plan), also governed by ERISA. William and Liv Kennedy divorced in 1994. Their divorce decree provided that Liv was "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 [William's] past or present or future employment." Despite this, William Kennedy did not execute a change of beneficiary form or any other documents removing Liv as his beneficiary under the SIP, though he apparently did execute a new form naming his daughter Kari as his beneficiary under the Pension Plan. When Mr. Kennedy died in 2001, Kari, as administrator of his Estate, asked Dupont to distribute the funds in Kennedy's SIP account to the Estate. Dupont, relying on the beneficiary designation on file, instead paid the balance of the account to Liv Kennedy. The Estate then sued Dupont and the plan administrator, claiming that the Kennedy's divorce decree was a valid waiver by Liv of any interest she had in the plan benefits,

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leaving the Estate as the presumptive beneficiary. The trial court determined that Liv's waiver in the divorce proceeding was sufficient as a federal common law waiver and ordered the administrator to pay the Estate the value of the benefits. On appeal, the Fifth Circuit Court of Appeals reversed. The court reasoned that ERISA specifically bars the assignment or alienation of benefits except where effected by means of a QDRO. Because it was undisputed that a QDRO was never obtained with respect to the SIP benefit, Liv's waiver in the divorce decree was a "nullity" with respect to that benefit. The U.S. Supreme Court held that the Fifth Circuit was wrong, and that a waiver is not necessarily an "assignment" or "alienation" within the meaning of §1056(d)(1). Further, the Court stated that a QDRO could not in fact merely provide that a spouse (or former spouse) is waiving a benefit; it must affirmatively "creat[e] or recogni[ze]. . . an alternate payee's right" to receive a benefit. However, the Court nevertheless affirmed the Fifth Circuit's holding, but on completely different grounds. Following oral arguments last year, the Court specifically requested further briefing on the question of whether it was necessary to follow the terms of the applicable plan documents. That issue now became the basis of the Court's decision. ERISA requires a plan fiduciary to act in accordance with the terms of the plan documents, to the extent consistent with ERISA. The Court determined that, with few exceptions, plan fiduciaries are not required to look beyond the terms of the plan in order to determine the proper payee of a benefit. Here, there was a designated beneficiary, and the plan documents clearly provided for payment to that designated beneficiary. The Court found that the SIP provided a clear method by which a beneficiary designation could be changed (i.e., file a new designation), but noted that Mr. Kennedy, for whatever reason, failed to do so, by that or any other method. The Court also found that the plan provided a way in which an plan interest could be disclaimed, which was not satisfied by Liv's purported waiver. In light of this, the administrator, according to the Court, complied with "its statutory ERISA duty by paying the benefits to Liv in conformity with the plan documents." **Bottom Line:** Most of the uncertainty over waivers, divorce decrees, and QDROs is resolved by the *Kennedy* decision. Plan Administrators should ensure that their plan documents and related procedures clearly provide how the payee of a benefit will be determined, and that the substance of those documents and procedures is communicated to employees (such as in a summary plan description). An uncomplicated rule will enable the administrator to simplify administration, "avoid[ing] double liability, and ensur[ing] that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules."

If you have any questions regarding this decision, its effect upon your plans or other employee benefit-related issues, please contact the authors of this Alert, Jeffrey Ashendorf, jashendorf@fordharrison.com, 212-453-5926, Joelle Sharman, jsharman@fordharrison.com, 404-888-3975 or Rachel Krause, rkrause@fordharrison.com, 404-888-3824 or any member of Ford & Harrison's Employee Benefits practice group.