Think Your Employee's Divorce is a Sham to Get at Retirement Benefits? Don't Out-Think Yourself

By William McMahon on July 20, 2011

On Monday, the Fifth Circuit issued its opinion in *Brown v. Continental Airlines, Inc.*, 2011 WL 2780505 (5th Cir.), a rather unusual case addressing what a plan administrator's obligations are with respect to a Qualified Domestic Relations Order (QDRO) when the plan administrator thinks the underlying divorce that produced the order was a sham.

Plan administrators should take note:

"When it Comes to QDROs, Don't Out-Think Yourself, Even if You Believe The Employee Faked a Divorce"

In *Brown*, Continental alleged that the wives of nine pilots received lump sum distributions of the pilots' retirement benefits from Continental's defined benefit plan by entering into fraudulent divorces where the couples continued to live together and then remarried once the plan paid out benefits. The wives were able to obtain these lump sum distributions because the plan provided that an ex-spouse to whom benefits are assigned can elect to receive the same in lump sum form, provided that the participant was at least 50 years old (even if the participant was still working, which was the case for all of the pilots at issue).

Continental believed that the reason the pilots and wives executed this scheme was because they were worried about the financial uncertainty of the airline industry and a potential takeover of the plan by the Pension Benefit Guaranty Corporation, which might ultimately lead to less benefits at retirement.

Continental brought suit against the pilots and their wives seeking restitution of the benefits, pursuant under Section 502(a)(3) of ERISA. The District Court (Southern District of Texas) granted the defendants' Rule 12(b)(6) motion to dismiss, reasoning that a plan administrator may evaluate only whether a divorce decree is a valid QDRO based on the statutory criteria set out in Section 206(d)(3)(D) of ERISA, and the "motivation" or "good faith" of the underlying divorce is not one of those factors. The Fifth Circuit affirmed, holding that ERISA "does not authorize an administrator to consider or investigate the subjective intentions or good faith underlying a divorce."

Although Continental was unsuccessful (at least to date) in recouping the benefits it paid out, the Fifth Circuit holding is actually a very good decision for employers. As the Fifth Circuit emphasized in its opinion, an administrator's job in evaluating whether a divorce decree is, in fact, a QDRO is a

"straightforward matter that requires the administrator to take DROs at face value and not engage in complex determinations of underlying motives or intent."

In other words, the Court is promoting simplicity for administrators. Look at the court order, confirm that it complies with the criteria for a QDRO set forth in Section 206(d)(3)(D), and then stop. Don't out-think yourself.