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## ERISA PLANS, BENEFICIARY DESIGNATION FORMS, AND DIVORCE

The U.S. Supreme Court recently considered the intersection of ERISA plans, beneficiary designation forms, and divorce, in *Kennedy v. Plan Administrator for DuPont Sav. and Investment Plan* (No. 07-636)

In this case, the decedent, William, was a participant in his employer's savings and investment plan (SIP), and had the power to designate any beneficiary or beneficiaries, or to revoke such designations. If at the time the plan participant dies with no surviving spouse and no beneficiary designation in place, then distribution shall be made to or at the direction of the executor or administrator of the decedent's estate. The SIP is an ERISA "employee pension benefit plan," and as such the benefits provided under the plan cannot be alienated or assigned. A beneficiary, however, may execute a qualified disclaimer; the disclaimer would result in that beneficiary's share being distributed to an alternate beneficiary properly designated by the decedent.

William married and named his spouse, Liv, as the beneficiary of his SIP, but did not name a contingent beneficiary to take if she disclaimed her interest. The couple divorced, and the divorce decree stated that the wife "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 [William's] past or present or future employment." William did not execute any documents removing Liv as beneficiary of the SIP. He did, however, execute a new beneficiary designation from naming his daughter, Kari, as beneficiary of his employer's Pension and Retirement Plan, another ERISA plan. When William died in 2001, Kari, as executrix of William's estate, asked the employer to distribute the SIP funds to William's estate. The employer relied on the SIP beneficiary designation form and paid the funds

(approximately \$400,000) to Liv. William's estate sued the employer (DuPont) and the SIP plan administrator, and claimed that the divorce decree was a waiver on Liv's part of the SIP benefits, and that DuPont violated ERISA by paying the funds to Liv.

The District Court entered summary judgment for the estate, and the Fifth Circuit Court of Appeals reversed. The Fifth Circuit held that Liv's waiver in the divorce decree was an assignment or alienation of her interest in the SIP benefits to the estate, and under ERISA, this waiver could not be honored. The divorce decree was not a Qualified Domestic Relations Order (QDRO), which would have been exempt from the ERISA bar on assignment or alienation. The Fifth Circuit said that because the specific mechanism provided by ERISA to eliminate a spouse's interest in plan benefits was not invoked, the court could not give effect to Liv's waiver.

The U.S. Supreme Court granted certiorari to resolve a split among the Courts of Appeals and state supreme courts regarding "a divorced spouse's ability to waive pension plan benefits through a divorce decree not amounting to a QDRO." The Court also realized that this case "implicated a further split over whether a beneficiary's federal common law waiver of plan benefits is effective where that waiver is inconsistent with plan documents." The disposition of this case ultimately turned upon the latter issue.

The Court first considered the issue of whether Liv's waiver constituted an assignment or alienation to William's estate. It concluded that it did not, and that the waiver was effective. This, however, did not control the decision of the case. The Court next considered the question of whether the plan administrator was required to honor the waiver, and distribute the plan benefits to William's estate. The Court held it was not so required, and that the plan administrator "did its statutory ERISA duty by paying the benefits to Liv in conformity with the plan documents." The Court reviewed ERISA's requirement that every employee benefit plan has to be established pursuant to a written instrument, and that the plan administrator is obligated to act in accordance with the documents and instruments governing the plan. ERISA provides no exemption from this duty when it comes to pay benefits. In this case, William had designated Liv as the beneficiary of his SIP. The Court said that "the plan provided an easy way for William to change the designation, but for whatever reason he did not." Additionally, "the plan provided a way to disclaim an interest in the SIP account, but Liv did not purport to follow it." The Court said that the plan administrator did what was required according to the plan documents when it paid the benefits to Liv. Although the beneficiary designation form was not one of the "documents and instruments governing the plan, the governing plan documents provided "that the plan administrator will pay benefits to a participant's designated beneficiary, with designations and changes to be made in a particular way."

In order to avoid similar results, estate planning and domestic relations attorneys should ensure that benefit waivers arising out of a divorce are reflected in the beneficiary designations on file with the employee benefit plan administrator and not just in the divorce decree.

The attorneys at Oast & Hook can assist clients with their estate, financial, insurance, long-term care, veterans' benefits and special needs planning requirements.

### Ask Allie

O&H: Allie, we've heard about a cat sanctuary called Tabby's Place. Please tell us more about it.

Allie: Sure! Tabby's Place is a cage-free sanctuary in New Jersey for cats in hopeless situations. The residents come primarily from public shelters, and Tabby's Place does not turn cats away due to age, medical need or "lack of adoptability." The facility serves as an adoption center, hospital, and hospice, and it is a haven for several older, chronically ill, or handicapped cats. These cats are able to live full and happy lives with the medical care, love and affection they deserve. You can read more about this wonderful facility at [www.tabbysplace.org](http://www.tabbysplace.org). I'm lucky to have my home at Oast & Hook, and I'm glad there is a special place for cats who need help.



Please feel free to e-mail your pet- and animal-related questions to Allie at: [allie@oasthook.com](mailto:allie@oasthook.com).

### Announcements

Thomas Hoddinott from Thomas Hoddinott Insurance Agency and Andrew Hook presented the "Long-term Care and Elder Care Seminar" on February 10th. We would like to thank everyone who attended. To view a copy of the presentation please visit our website at [www.oasthook.com/legal\\_information/what\\_you\\_need\\_to\\_know\\_about\\_ltc\\_planning.pdf](http://www.oasthook.com/legal_information/what_you_need_to_know_about_ltc_planning.pdf). If you would like an attorney to come out to your group to give a presentation on paying for long-term care expenses by using methods such as Medicaid then please telephone Jennifer Lantz at 757-967-9724.

The Chesapeake and Oast & Hook will co-present a seminar entitled "Retirement Planning in an Uncertain Economy" at 6:30 p.m., Wednesday, March 11th at 955 Harpersville Road, Newport News, Virginia. Seats are limited, so please register early. For more information or to register please phone Jennifer Lantz at 757-399-7506.

The Adult Protective Services Unit of the Hampton Division of Social Services and Riverside PACE will be hosting its first "Interagency Community Resource Expo" from 8:30 a.m. to 2:00 p.m., Friday, April 17th at the Y. H. Thomas Community Center in Hampton, Virginia. Oast & Hook is pleased to announce that it will be an exhibitor at this expo. This expo is geared toward senior citizens, individuals with disabilities, children of seniors, children of disabled individuals, and other relatives, neighbors and advocates of seniors and those with disabilities. To register for this expo, please phone the reservation hotline at 757-727-1949.

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