

**07-636 KENNEDY V. PLAN ADM. FOR DUPONT SAVINGS**

DECISION BELOW:497 F3d 426

LOWER COURT CASE NUMBER: 05-41851

**QUESTIONS PRESENTED:**

1. Was the Estate of the late William P. Kennedy the proper recipient of the pension funds in his DuPont Savings and Investment Plan, as opposed to Mr. Kennedy's Ex-Wife Liv Kennedy, who entered into a 1994 divorce-decree that voluntarily waived those SIP benefits under federal common law and the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001 et seq. ("ERISA")?
2. Does federal common law, as applied to Ex-Spouse Liv Kennedy's waiver of any right to receive William P. Kennedy's pension benefits in a 1994 divorce-decree, govern the judicial determination of whether DuPont's Plan Administrator wrongfully paid Mr. Kennedy's SIP benefits to his ex-spouse Liv Kennedy, as the District Court ruled, or was that court restricted to examining only DuPont's "Plan Document," that is, the late William P. Kennedy's 1974 beneficiary designation of his then-wife?
3. Was the Fifth Circuit correct in concluding that ERISA's Qualified Domestic Relations Order provision, 29 U.S.C. § 1056(d)(3)(B)(i), is the only valid way a divorcing spouse can waive her right to receive her ex-husband's pension benefits under ERISA?
4. What legal standards govern the award of fees to prevailing parties under ERISA (an issue of first impression for this Court)?

CERT. GRANTED 2/19/2008

LIMITED TO QUESTION 3 PRESENTED BY THE PETITION ORDER OF 10/28/2008: THE PARTIES ARE DIRECTED TO FILE SUPPLEMENTAL BRIEFS ADDRESSING THE FOLLOWING QUESTION: WHETHER 29 U.S.C. §1104(a)(1)(D), MANDATING ADMINISTRATION OF A PLAN IN ACCORDANCE WITH PLAN DOCUMENTS, REQUIRED THAT THE DISTRIBUTION IN QUESTION BE MADE TO LIV KENNEDY, EVEN ON THE ASSUMPTION THAT A WAIVER OF HER INTEREST WAS NOT OTHERWISE SUBJECT TO STATUTORY BAR.