No. 10-1702

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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MARY EMMA BOYD AND W. P. BOYD, JR.,
As Personal Representative of the Estate
Of Emma C. Boyd,

Plaintiffs-Appellants

v.

METROPOLITAN LIFE INSURANCE COMPANY,
Defendant-Appellee

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On Appeal from the United States District Court,
District of South Carolina

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# BRIEF FOR THE SECRETARY OF LABOR AS AMICUS CURIAE SUPPORTING DEFENDANT-APPELLEE

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M. PATRICIA SMITH
Solicitor of Labor

TIMOTHY D. HAUSER
Associate Solicitor for Plan Benefits Security

NATHANIEL I. SPILLER
Counsel for Appellate and Special Litigation

JAMILA B. MINNICKS
Trial Attorney
U.S. Department of Labor
200 Constitution Ave., N.W., Room N-4611
Washington, DC 20210
(202) 693-5522

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STATEMENT OF INTEREST

The Secretary of Labor has primary enforcement authority for Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq.; see, e.g., Secretary of Labor v. Fitzsimmons, 805 F.2d 682, 687-691 (7th Cir. 1986); Donovan v. Cunningham, 716 F.2d 1455, 1462-63 (5th Cir. 1983). The question presented in this case concerns whether, in light of the decision in Kennedy v. DuPont, 129 S. Ct. 865 (2009), holding that plan administrators must distribute benefits to beneficiaries in accordance with plan documents, ERISA allows a plan administrator to disregard a validly-executed beneficiary designation because the plan lacks a formal procedure through which a designated beneficiary can refuse benefits. The Kennedy decision adopted the analysis of the United States, which filed a brief on behalf of the Secretary. More recently, the Secretary filed a brief as amicus curiae in Matschiner v. Lewis, No. 09-3576 (8th Cir., decision pending), in which the district court – faced with the identical issue presented in this case – concluded that the plan administrator was not bound by Kennedy's directive to distribute benefits to the designated beneficiary, on the rationale that Kennedy was limited to cases where the plan included a formal disclaimer procedure. Like the district court in this case, the Secretary disagrees that the absence of such a

procedure makes a difference where, as here, there is a valid beneficiary designation under the plan and the designated beneficiary willingly accepts the benefits (i.e., does not disclaim them) when distributed. Accordingly, the Secretary has an interest in participating as amicus curiae in this case to ensure that the decision of the district court below is upheld.

## STATEMENT OF THE CASE

1. Statutory background. ERISA was passed by Congress in an effort to ensure proper plan funding and administration for the benefit of plan participants and their beneficiaries. To that end, ERISA governs the payment of benefits under employee benefits plans. It requires every plan to be established and maintained pursuant to a written instrument and to have named fiduciaries who have authority and control to manage the operation and administration of the plan. 29 U.S.C. § 1102(a)(1). A plan must specify, among other things, the basis on which payments are made to and from the plan. 29 U.S.C. § 1102(b)(4). A fiduciary must discharge his duties with respect to the plan "for the exclusive purpose" of "providing benefits to participants and their beneficiaries" and defraying reasonable plan expenses. 29 U.S.C. § 1104(a)(1)(A).[1]

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[1] A "participant" is an "employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit." 29 U.S.C. § 1002(7). A "beneficiary"

To curb fiduciary abuses by those entrusted to engage in the prudent administration of retiree pensions and benefits, Congress identified as a "core principle" the necessity for plan administrators to act "in accordance with the documents and instruments governing the fund unless they are inconsistent with the fiduciary principles of the section." S. Rep. No. 93-127 (1973); see also H. Rep. No. 93-533, reprinted in U.S.C.C.A.N. 4639 (1973); S. Rep. No. 92-1150 at 61-62 (1972). ERISA § 404(a)(1)(D) embodies this principle by stating, as follows:

> . . . a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and— . . .
>
> (D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provision of [Titles I and IV of ERISA].

29 U.S.C. § 1104(a)(1)(D).

In Kennedy, the Supreme Court held that ERISA § 404(a)(1)(D) imposes a "plan documents rule," requiring that a plan fiduciary "discharge his duties," including distributing benefits, "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent" with the provisions of ERISA. Its purpose,

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is a "person designated by a participant or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder." 29 U.S.C. § 1002(8).

the Court said, "is to provide . . . a straightforward rule that lets employers establish a uniform administrative scheme, with a set of standard procedures to guide processing of claims and disbursement of benefits." Kennedy, 129 S. Ct. at 875 (citing Egelhoff v. Egelhoff, 532 U.S. 141, 148 (2001); Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 9 (1987)); see Curtiss-Wright v. Schoonejongen, 514 U.S. 73, 83 (1995) (ERISA's statutory scheme "is built around reliance on the face of written plan documents"). By requiring administrators to follow this "plan documents rule,"

> ERISA forecloses any justification for enquiries into nice expressions of intent, in favor of the virtues of adhering to an uncomplicated rule: "simple administration, avoid[ing] double liability and ensur[ing] that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules."

Kennedy, 129 S. Ct. at 875-876 (citation omitted).[2]

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[2] Under the "plan documents rule," the last beneficiary designation pursuant to the plan trumps any "waiver" in a non-plan document, including any domestic relations order that is not a valid QDRO; where there is a valid QDRO naming an alternate payee, the QDRO becomes the controlling plan document, and so must be followed in accordance with the plan documents rule. See Kennedy, 129 S. Ct. at 876. In this case, as in Kennedy, there was no QDRO and thus no recognized alternate payee. Id. at 873; Court's June 15, 2010, Order, p.5. A QDRO is a domestic relations order (e.g., divorce decree or separation agreement) that "creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee, the right to, receive all or a portion of the benefits payable with respect to a participant under a plan," and that meets other specified requirements. 29 U.S.C. § 1056(d)(3)(B)(i). In both Kennedy and in this case, the domestic relations order could not be considered a QDRO because its purported waiver of ERISA benefits did not designate an "alternate payee," which the QDRO

A beneficiary with a valid right to benefits pursuant to plan documents may nonetheless waive or disclaim this right by refusing to accept payment. See Kennedy, 129 S. Ct. at 871; cf. IRC § 2518, 26 U.S.C. § 2518 (giving preferential tax treatment in the case of a qualified disclaimer of property).

2. Factual background. Emma C. Boyd ("Emma" or "decedent"), as part of her employment with Delta Airlines, Inc., participated in a life insurance plan ("the Plan") governed by ERISA . Docket Entry #1 at 2.[3] Under the Plan, upon the death of the insured, benefits were to be provided "to the appropriately designated beneficiary, or a default beneficiary if there was no appropriately designated beneficiary." Id. Specifically, the Certificate of Insurance, which Appellee MetLife attached as an exhibit to its motion to dismiss, provided:

> You may designate a Beneficiary in your application or enrollment form. You may change your Beneficiary at any time. To do so, You must send a Signed and dated, Written request to Us, using a form Satisfactory to Us. Your Written request to change the Beneficiary must be sent to Us within 30 days of the date You Sign such request.

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provisions define as "any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all or a portion of, the benefits payable under a plan with respect to such participant." 29 U.S.C. § 1056(d)(3)(K).

[3] The Secretary relies upon the statement of facts enumerated in the District Court's June 15, 2010 Order.

> You do not need the Beneficiary's consent to make a change. When We receive the change, it will take effect as of the date You Signed it. The change will not apply to any payment made in good faith by Us before the change request was recorded.
>
> If two or more Beneficiaries are designated and their shares are not specified, they will share the insurance equally.
>
> If there is no Beneficiary designated or no surviving designated Beneficiary at your death, We will determine the Beneficiary to be Your Estate.
>
> Any payment made in good faith will discharge our liability to the extent of such payment.

Docket Entry #10-2 at 30 (original capitalization).

On December 10, 2001, Emma filed with MetLife a beneficiary designation form naming her then-husband, Robert Joseph Alsager ("Robert"), as the primary beneficiary of the life insurance proceeds payable under the policy. Docket Entry #1 at 2; Docket Entry #1-2. The same beneficiary designation form designated Emma's mother, Mary Emma Boyd ("Mary Emma"), as the contingent beneficiary. Id. On or about February 13, 2008, Emma and Robert separated, and, on April 4, 2008, the Family Court for the Ninth Judicial Circuit in Charleston County, South Carolina entered an "Order Approving Separation and Property Settlement agreement" ("the Order"). Docket Entry #1-3. The Order incorporated a Separation and Property Settlement Agreement ("Separation Agreement"),

signed by both Emma and Robert, in which each party agreed to "relinquish[] and disclaim[] all right, claim or interest . . . that she or he may acquire in the property or estate of the other, including . . . the right to receive proceeds, funds or property as a beneficiary under any life insurance policies . . . and other similar plans or assets of the other party." Id. at 12.

Emma died on November 8, 2008. Subsequently, the Appellants – Mary Ellen and her son W.P. Boyd, Jr., as personal representative of the decedent's estate (collectively "Boyds") – submitted to MetLife claims for the Plan's life insurance proceeds. MetLife, however, determined that the proceeds were payable to Robert, as he was the designated beneficiary on the most recent beneficiary designation form on file with the MetLife – the December 10, 2001 form. Docket Entry #1 at 3.

By letter dated October 8, 2009, the Boyds appealed MetLife's decision to deny their claim. Docket Entry #1-4. Specifically, the Boyds argued that the Separation Agreement constituted Robert's waiver of his right to receive the Plan's life insurance proceeds. The Boyds also claimed that the Order incorporating the Separation Agreement constituted an enforceable qualified domestic relations order ("QDRO"). See 29 U.S.C. § 1056(d)(3). By letter dated December 8, 2009, MetLife affirmed its original

decision to deny the Boyds claim and award the life insurance proceeds to Robert. Docket Entry #1-5.[4]

3. Decision below. On December 23, 2009, the Boyds filed a complaint in the United States District Court, District of South Carolina, Charleston Division, seeking the payment of life insurance benefits pursuant to ERISA, 29 U.S.C. § 1132(a)(1)(B). MetLife moved for dismissal under Fed. R. Civ. P. 12(b)(6), and the district court granted MetLife's motion on June 15, 2010.

In rendering its decision, the district court considered and rejected the Boyds' argument that the lack of a formal disclaimer provision rendered Kennedy inapplicable to these facts. The court ruled instead that the Kennedy holding, authorizing a plan administrator to distribute benefits in conformity with the beneficiary designation it had on file, applied whether or not the plan contained a formal disclaimer procedure. The court thus noted that the lack of a plan mechanism to waive or disclaim rights to benefits did not change the fact that "[u]nder 'the terms of the plan' the Plan beneficiary was Robert Alsager." Court's June 15, 2010 Order, p.10. It therefore rejected Appellants' argument that Altobelli v. IBM, 77 F.3d 78

[4] During this litigation, the Boyds conceded that the Order incorporating the Separation Agreement not satisfy the requirements of a QDRO. District Court's June 15, 2010 Order, p. 5.

(4th Cir. 1996), remained good law in the Fourth Circuit in a case where the plan lacked a formal disclaimer provision. Court's June 15, 2010 Order, p.8 ("the Court agrees with the Defendant that the Kennedy decision, by deciding that the plan documents, and not a federal common law waiver, control the disposition of benefits, overruled circuit court decisions holding otherwise, including Altobelli").

## SUMMARY OF ARGUMENT

The district court properly determined that the holding in Kennedy v. DuPont was controlling, regardless of whether the plan itself contained a formal disclaimer provision. Kennedy held that a plan administrator, under the "plan documents rule" mandated by ERISA § 404(a)(1)(D), should distribute benefits to the beneficiary designated in accordance with plan terms, without regard to external documents that purport to waive or assign plan benefits, such as divorce decrees that do not satisfy ERISA's requirements for a "qualified domestic relations order" (or QDRO) under 29 U.S.C. § 1056(d)(3). In so holding, Kennedy recognized the common-law right of a beneficiary to refuse (or "disclaim") benefits to which that person is entitled, and noted that a formal procedure for disclaiming benefits was included in the DuPont plan. The footnote in Kennedy on which the Appellants rely - which noted that the Court was not addressing "a situation

in which the plan documents provide no means for a beneficiary to renounce an interest in benefits," 129 S. Ct. at 877 n.13 – left open whether a plan could effectively force unwanted plan benefits on an unwilling recipient by affirmatively ignoring the common-law disclaimer principle. Nothing in the Kennedy decision, however, suggested that silence in a plan should be construed as preventing a disclaimer under that plan, or, more to the point, that a plan administrator is entitled to ignore the beneficiary designation on file if the plan makes no explicit provision for disclaiming benefits and does not seek to force benefits on an unwilling beneficiary.

Here, since designated beneficiary Robert made no effort to disclaim his right to benefits, MetLife made no effort to override or disregard a disclaimer (since there was none), and the plan did not expressly seek to foreclose disclaimers, the question left open by Kennedy was not presented. MetLife therefore properly followed the ERISA plan documents rule articulated in Kennedy in distributing the life insurance proceeds to Robert, in accordance with the 2001 beneficiary designation form that was on file with the Plan. The MetLife-administered Plan does not seek to impose an unwanted benefit on the beneficiary. Thus, the district court was correct in determining that the lack of a formal benefits disclaimer provision in the plan does not alter the fact that a plan administrator may not disregard a

validly-executed beneficiary designation in favor of what it may otherwise consider to be a valid waiver expressed in a non-plan document. As long as there was no effort to disclaim benefits by the designated beneficiary at the time of distribution, which there was not, MetLife properly distributed the life insurance benefits to Robert, the individual properly designated by Emma and identified by MetLife as the beneficiary under the Plan.

## ARGUMENT

The logic and clear implication of Kennedy require the conclusion that its ruling that a plan administrator is bound by the beneficiary designation that the participant last gave to the plan applies regardless of whether plan documents include an express disclaimer provision. In reaching the conclusion that the administrator is governed by the ERISA plan documents rule, Kennedy took full account of the principle that no beneficiary can be forced to accept benefits against his or her will. Although Kennedy expressly avoided addressing whether its ruling may be affected by the absence of an express plan disclaimer provision, nothing in the decision suggests that a plan disclaimer provision is a prerequisite to giving the holding effect. Rather, the salient fact in both Kennedy and this case is that the designated beneficiary – each of whom arguably had indicated an intent to waive plan benefits in a divorce decree (in Kennedy) or a separation

agreement (in this case) unaccompanied by a change in plan beneficiary submitted to the plan in accordance with plan documents – did not, when the time came for distribution, seek to renounce benefits owed under the plan. The district court properly found this case legally indistinguishable from Kennedy although the plan here, unlike the one in Kennedy, lacks any formal disclaimer provision.

In upholding the distribution of Emma's life insurance benefits to Robert, the decision of the district court is consistent with the benefit-determination scheme embodied within ERISA. As Kennedy explains, ERISA "obligates administrators to manage ERISA plans 'in accordance with the documents and instruments governing' them, 29 U.S.C. § 1104(a)(1)(D)." 129 S. Ct. at 866.[5] ERISA requires every employee benefit plan to be established and maintained pursuant to a written instrument. 29

[5] ERISA also "requires covered pension benefit plans to 'provide that benefits . . . may not be assigned or alienated,' § 1056(d)(1); and exempts from this bar qualified domestic relations orders (QDROs), § 1056(d)(3)." Id. Neither of those provisions is directly pertinent to this case, as it does not involve a pension subject to the anti-alienation provision and, like in Kennedy, see 129 S. Ct. at 873, there is no argument that the domestic relations order is a QDRO. Because there is no argument for treating the domestic relations order as a QDRO, this Court has no cause to address the preliminary question whether the QDRO provisions, which were adopted as an exception to ERISA's prohibition on the alienation or assignment of pension benefits, see ERISA § 206(d)(1), 29 U.S.C. § 1056(d)(1); see also Mackey v. Lanier Collection Agency & Service, Inc., 486 U.S. 825, 836 (1988), are also applicable to life insurance or other welfare benefits.

U.S.C. § 1104(a)(1). Furthermore, ERISA provides that a plan shall "specify the basis on which payments are made to and from the plan." 29 U.S.C. § 1102(b)(4). Finally, pursuant to ERISA § 502(a)(1)(B), a participant or beneficiary who is deprived of benefits because a plan administrator fails to adhere to this administrative scheme may bring a cause of action "to recover benefits due to him under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). Benefits due "under the terms of the plan" are thus found in the "documents and instruments" that comprise a plan – and not in non-plan documents such as domestic relations orders that fail to satisfy the strict requirements of a QDRO. Accordingly, the "plan documents rule" embodied in section 1104(a)(1)(D) and endorsed by Kennedy allows plan administrators to distribute benefits in a streamlined and efficient manner, without requiring them to conduct an individualized inquiry into the intent of each plan participant at the time of the distribution. See Kennedy, 129 S. Ct. at 875 (adopting "a straightforward rule of hewing to the directives of the plan documents that lets employers 'establish a uniform administrative scheme, [with] a set of standard procedures to guide processing of claims and disbursement of benefits.'") (citations omitted).

Under the "plan documents rule," plan administrators making benefit determinations are required to consider only the plan documents and to follow the beneficiary designation filed by the participant according to the plan's terms, consequently, they are not required or expected to consider "a multitude of external documents that might purport to affect the dispensation of benefits." Kennedy, 129 S. Ct. at 876 (citation omitted).

In Kennedy, the decedent-participant and his ex-wife divorced in 1994. Under the terms of the divorce decree, the ex-wife was "divested of all right, title, interest, and claim in and to . . . [a]ny other rights related to any . . . retirement plan, pension plan, or like benefit program existing by reason of [decedent's] past or present or future employment." Kennedy, 129 U.S. at 869. At the time, decedent possessed two employee benefit plans: a savings and investment plan ("SIP") and a pension and retirement plan ("Pension plan"). Decedent did not, however, execute any plan document removing his ex-wife as the SIP plan beneficiary, although he executed a new beneficiary form naming his daughter the appropriate beneficiary for the Pension plan upon his death.

Upon the participant's death, the daughter asked DuPont to accept the divorce decree's purported waiver and distribute the funds from the SIP account to the estate. As the decedent had never changed the SIP

beneficiary designation, however, DuPont relied upon the on-file designation and distributed the proceeds of the SIP to decedent's ex-wife. The Supreme Court upheld DuPont's decision, determining that a plan administrator is required to distribute benefits in accordance with the beneficiary designation on file despite an apparent waiver. Although holding that a beneficiary cannot be forced to take a benefit that he or she does not want, the Court reasoned that the plan administrator is otherwise bound by the plan documents under section 404(a)(1)(D) when rendering its benefits determination. Failure to act in accordance with plan documents, including the beneficiary designation submitted by the participant, in such a circumstance would render plan administrators responsible for conducting investigations of documents and evidence extraneous to plan documents, in violation of the plan documents rule mandated by section 404(a)(1)(D) that is enforceable in a benefits claim brought under section 502(a)(1)(B). Kennedy, 129 S. Ct. at 875 ("[t]he Estate's claim therefore stands or falls by 'the terms of the plan,' § 1132(a)(1)(B)").

In rejecting the need for a plan administrator to honor a waiver not expressed in a valid QDRO or other governing plan document, the Court also stated that a designated beneficiary could not be forced to take an otherwise payable but unwanted plan benefit. Kennedy makes clear that this

right to disclaim derives from the common law of trusts, which is the "starting point" for ERISA analysis. Harris Trust & Savings Bank v. Salomon Smith Barney, Inc., 530 U.S. 238, 250 (2000).[6] An individual has the right to refuse an otherwise payable, but unwanted, benefit to which he is entitled under the terms of the plan documents on file at the time of the beneficiary determination. Kennedy, 129 S. Ct. at 871-872 (holding that the disclaiming of beneficiary rights does not violate the anti-alienation provision if the beneficiary does not attempt to assign or alienate his interest to a third party).[7] As stated in Kennedy,

> [T]he cognate trust law is highly suggestive here. Although the beneficiary of a spendthrift trust traditionally lacked the means to

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[6] As the Supreme Court stated in Firestone Tire and Rubber Co. v. Bruch, 489 U.S. 101, 110-111 (1989): "ERISA's legislative history confirms that the Act's fiduciary responsibility provisions, 29 U.S.C. §§ 1101-1114, 'codif[y] and mak[e] applicable to [ERISA] fiduciaries certain principles developed in the evolution of the law of trusts.' H. R. Rep. No. 93-533 at 11, reprinted in 1974, U.S.C.C.A.N. 1974 4639, 4649." Firestone involved both pension and unfunded welfare plans, demonstrating that these background principles are applicable to all ERISA plans, not just those that otherwise would have been subject to traditional trust law.

[7] Kennedy explained at some length how, consistent with the law of trusts, a disclaimer, in which the right to benefits is renounced without directing payment to an alternate payee, is not an "assignment" or "alienation" for purposes of the ERISA "anti-alienation" provision. 129 S. Ct. at 871-872. By its terms, that provision applies only to pension benefits. A fortiori, designated beneficiaries of welfare benefits, which are not subject to the prohibition on alienations, have the same right to disclaim if they choose to exercise it.

> transfer his beneficial interest to anyone else, he did have the power to disclaim prior to accepting it, so long as the disclaimer made no attempt to direct the interest to a beneficiary in his stead. . . . [T]he general principle that a designated spendthrift can disclaim his trust interest magnifies the improbability that a statute [i.e., ERISA] written with an eye on the old law would effectively force a beneficiary to take an interest willy-nilly. Common sense and common law both say that "[t]he law certainly is not so absurd as to force a man to take an estate against his will."

129 S. Ct. at 871-872 (citations omitted).[8]

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[8] Moreover, as Kennedy further explains, id. at 871, a beneficiary's right to refuse an otherwise payable benefit is recognized in the Internal Revenue Code's "qualified disclaimer" rule: under IRC § 2518, 26 U.S.C. § 2518, "if a person makes a qualified disclaimer with respect to any interest in property, this subtitle shall apply with respect to such interest as if the interest had never been transferred to such person;" see 26 C.F.R. § 1.401(a)(9)-4, Q&A 4 (recognizing section 2518's application in the pension plan context). A "qualified disclaimer" under section 2518 is defined as

> [A]n irrevocable and unqualified refusal by a person to accept an interest in property but only if –
> 1. Such refusal is in writing
> 2. such writing is received by the transferor of the interest, his legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is 9 months after the later of –
>     A. the day on which the transfer creating the interest in such plan is made, or
>     B. the day on which such person attains age 21,
> 3. such person has not accepted the interest or any of its benefits, and
> 4. as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either –
>     A. To the spouse of the decedent, or

The Kennedy Court also noted that a plan may contain procedures for effecting such a disclaimer, and that the DuPont plan included such procedures. See Kennedy, 129 U.S. at 877. Moreover, the Court further expressly stated, in a footnote, that it was not addressing "a situation in which the plan documents provide no means for a beneficiary to renounce an interest in benefits." Kennedy, 129 S. Ct. at 877 n.13. Given that Kennedy firmly grounds the disclaimer right in "common sense and common law," the only way a plan could provide "no means for a beneficiary to renounce an interest in benefits" would be to affirmatively state that disclaimer is not permitted under the plan. A plan's silence is not enough unless the plan actually disregards an attempted disclaimer based on the absence of a disclaimer procedure in the plan documents. That was not the case in Kennedy, and it is not the case here.

Accordingly, a person can refuse to accept an otherwise payable interest in property, including an ERISA plan benefit, and this right to refuse exists whether the plan documents identify it or not. Insofar as, pursuant to Kennedy, no person can be forced to accept a benefit against his or her will, a person's right of refusal to accept benefits otherwise payable to him or her

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B. To a person other than the person making the disclaimer.

26 U.S.C. § 2518(b).

is self-executing and requires no express incorporation by a plan in order to make the refusal permissible. Such a refusal to accept benefits is, of course, unusual. In the usual circumstance, where there is no disclaimer by the designated beneficiary of the otherwise payable benefit, the beneficiary designation in accordance with plan terms must be given effect. Making exercise of the common-law disclaimer right conditional on the existence of a plan term providing for such right would effectively force a beneficiary in a plan that lacks an explicit disclaimer provision to accept a benefit that he or she rejects, a principle soundly rejected in Kennedy.

More significant than the presence of a provision for disclaimer in the DuPont plan was the fact that Kennedy's ex-wife did not effect any disclaimer to accept the benefits otherwise payable to her, although the plan terms identified that such right was available. This created an apparent conflict between the divorce decree, which the Estate argued manifested intent to waive the benefits, and the beneficiary designation identifying her as the proper beneficiary. The Kennedy Court determined that the plan administrator properly ignored the waiver contained in the divorce decree because Kennedy's ex-wife was the designated beneficiary on the plan's records and, moreover, there was no refusal by the ex-wife to take the benefits otherwise payable to her under the governing plan documents.

Thus, the plan administrator was bound by the designation included with the plan documents and properly distributed the benefits to her under ERISA section 404(a)(1)(D).

So too, in this case Robert had the same ability to refuse to accept payment of any interest in the life insurance benefits as the ex-wife did in Kennedy. In both Kennedy and this case,"[t]he plan provided an easy way for [the participant] to change the designation, but for whatever reason [the participant] did not." Kennedy, 129 S. Ct. at 877. And as in Kennedy, Robert, as the designated beneficiary under the governing plan documents, did not seek to refuse those benefits.

Thus, the narrow issue left open by the Kennedy footnote does not warrant a conclusion that a court considering a plan lacking a formal disclaimer procedure is permitted to ignore the plan documents rule described in Kennedy. On the contrary, as discussed above, Kennedy made clear that the right of a participant to refuse to accept otherwise payable benefits is grounded in trust law underlying ERISA. While Kennedy recognized that a plan may expressly provide terms that describe procedures for a beneficiary to follow in order to refuse otherwise payable benefits, it is incorrect to conclude that a plan that does not include such additional provisions is permitted to ignore the otherwise applicable plan documents.

Thus, for Appellants to argue that the district court was required to disregard the 2001 beneficiary designation because the MetLife plan lacked a formal disclaimer provision misses the point of Kennedy entirely.

The district court appropriately interpreted Kennedy regarding a beneficiary's right to waive a benefit in the absence of a formal waiver procedure. Considering the purpose of section 404(a)(1)(D) in conjunction with the language in Kennedy, the court reasoned, on this question of first impression in the Fourth Circuit:

> Here, the Certificate of Insurance, which the Plaintiffs do not dispute was part of the Plan, provided the decedent with a mechanism for designating a beneficiary or beneficiaries. The decedent named Alsager as the beneficiary. The Plan also provided the decedent with the opportunity to change the named beneficiary; she did not do so. Thus, under "the terms of the plan" the plan beneficiary was Robert Alsager. That the Plan did not provide a mechanism for Alsager to waive his rights does not change this fact. . . . See Dunlap v. Ormet Corp., No. 5:08CV65, 2009 WL 763382 at *7 (N.D. W.Va. March 19, 2009) ("[U]nder Kennedy, if the plan sets forth procedures that comply with ERISA's requirements, and if the plan administrator follows those procedures, no duty may be imposed upon the plan administrator to examine external documents which could create ambiguities concerning the dispensation of benefits.").

Order, pp. 9-10.

The court's conclusion is fully consistent with Kennedy, for the same reason the Kennedy Court gave:

> [T]he cost of less certain rules would be too plain. Plan administrators would be forced "to examine a multitude of external documents that might purport to affect the dispensation of benefits" . . . and be drawn into litigation over the meaning and enforceability of purported waivers. The Estate's suggestion that a plan administrator could resolve these sorts of disputes through interpleader actions merely restates the problem with the Estate's position: it would destroy a plan administrator's ability to look at the plan documents and records conforming to them to get clear distribution instructions, without going into court.

Kennedy, 129 S. Ct. at 875-76 (citations omitted). As Kennedy decided, there exists "no exemption from this duty when it comes time to pay benefits," and Appellants' "claim therefore stands or falls by 'the terms of the plan.'" Id. at 875. Insofar as MetLife's distribution to Robert was in accordance with the plan documents and lawful under the statute, the court was correct as a matter of law in determining that the lack of a formal disclaimer provision did not render the Kennedy holding inapplicable to this case or reinstate pre-Kennedy circuit law expressly overruled by Kennedy.[9]

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[9] In Altobelli, the Fourth Circuit held that a purported waiver, contained within a non-QDRO divorce decree, governed the distribution of benefits in an ERISA-covered pension plan although it conflicted with the terms of the plan. Kennedy's holding that plan administrators are prohibited from considering documents (other than a valid QDRO) external to the plan when rendering benefits determinations expressly overrules a line of conflicting authority regarding the common law waiver doctrine, including Altobelli. See Kennedy, 129 S. Ct. at 870 nn4&5. The district court was thus correct to state :

> [A]fter reviewing the Kennedy opinion, this Court must reject the Plaintiff's assertion that the Fourth Circuit's holding in

## CONCLUSION

The judgment of the district court should be affirmed for the reasons stated in this brief.

Respectfully submitted,

M. PATRICIA SMITH
Solicitor of Labor

TIMOTHY D. HAUSER
Associate Solicitor
Plan Benefits Security Division

NATHANIEL I. SPILLER
Counsel for Appellate and Special Litigation

/s/ Jamila B. Minnicks
JAMILA MINNICKS
Trial Attorney
U.S. Department of Labor, Room N-4611
200 Constitution Ave., N.W.
Washington, D.C. 20210
(202) 693-5522

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> Altobelli remains good law despite the Supreme Court's decision in Kennedy. **The Kennedy opinion clearly treated Altobelli as a decision that stood for the rule that a federal common law waiver prevails over inconsistent plan documents – the rule that the Kennedy Court ultimately rejected**. Moreover, there was a dissenting opinion in Altobelli, and the Supreme Court twice cited to that dissent to support its own decision in Kennedy. Thus, the Court agrees with the Defendant that the Kennedy decision, by deciding that plan documents, and not federal common law waiver, control the disposition of benefits, overruled circuit court decisions holding otherwise, including Altobelli.

Court's June 15, 2010 Order, p. 8 (emphasis added).

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Dated: September 14, 2010

/s/ Jamila B. Minnicks
*Attorney for Amicus Curiae*

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on this 14th day of September, 2010, I caused this Brief of Amicus Curiae in Support of Appellee to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

Robert E. Hoskins
Foster Law Firm, LLC
601 East McBee Avenue, Suite 104
Greenville, South Carolina 29602
rhoskins@erisaexperience.com
*Counsel for Appellants*

Elizabeth J. Bondurant
Smith Moore Leatherwood LLP
Atlantic Center Plaza
1180 West Peachtree Street NW
Suite 2300
Atlanta, GA 30309-3482
*Counsel for Appellee*

I further certify that on this 14th day of September, 2010, I caused the required number of bound copies of the Brief of Amicus Curiae to be hand-filed with the Clerk of the Court and a copy of the Brief of Amicus Curiae to be served, via Federal Express, upon counsel for the Appellants and Appellee, at the above-listed addresses.

/s/ Jamila B. Minnicks
*Attorney for Amicus Curiae*