No. 09-3576

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

KATHERINE MATSCHINER AND KRISTINA MATSCHINER,

Plaintiffs-Appellants

v.

ALAN L. LEWIS, HARTFORD LIFE,

Defendants

HARTFORD LIFE AND ACCIDENT INSURANCE COMPANY,

Defendant-Appellant.

On Appeal from the United States District Court,
District of Nebraska

BRIEF FOR THE SECRETARY OF LABOR AS AMICUS CURIAE SUPPORTING DEFENDANT-APPELLANT AND REQUESTING REVERSAL

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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 falls within that authority: 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 either permits or requires a pension plan administrator to disregard a validly-executed beneficiary designation because the plan lacks a formal procedure through which a designated beneficiary can refuse benefits.

In the instant litigation, Hartford Accident and Life Ins. Co. ("Hartford" or "Appellant") relied upon the plan documents in effect at the time it rendered a benefits determination under RoJane Lewis' ("RoJane") life insurance policy. The district court concluded that the plan's lack of a disclaimer procedure rendered this matter distinguishable from Kennedy, and thus not subject to the plan documents requirement contained within ERISA §404(a)(1)(D), 29 U.S.C. §1104(a)(1)(D) . The Secretary, however, believes that this decision erroneously weakens the Kennedy holding based

on a factual distinction that should carry no legal consequences and that threatens to unduly burden plan administration. Accordingly, the Secretary has an interest in ensuring that, regardless of whether the plan in question contains a formal disclaimer provision, fiduciaries charged with interpreting and administering employee benefit plans perform these duties consistent with plan documents, including the latest beneficiary designation filed with the plan, as the Supreme Court held in Kennedy.

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. Drafted in part 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), 29 U.S.C. §1104(a)(1)(D).[1]

[1] 29 U.S.C. §1104(a)(1) states:

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). 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" 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 purpose of ERISA §404(a)(1)(D)'s requirement that a plan fiduciary distribute benefits "in accordance with the documents and

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> . . . 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].

instruments governing the plan insofar as such documents and instruments are consistent with the provisions of ERISA "is to provide" 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." 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:

> [G]iving a plan participant a clear set of instructions for making his own instructions clear, 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 (quoting Fox Valley & Vicinity Const. Workers Pension Fund v. Brown, 897 F.2d 275, 283 (7th Cir. 1990) (Easterbrook, J., dissenting)).

A beneficiary with a valid right to benefits pursuant to plan documents may nonetheless waive or disclaim this right by refusing to accept payment, as long as he does not attempt to assign the interest to a third party. 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. RoJane Lewis obtained life insurance through a Group Benefits Plan ("the plan") offered by her employer, Inacom Corporation ("Inacom"). Appellant's MSJ, p. 2.[2] Appellant Hartford funded the life insurance portion of the plan through its group life insurance policy. The plan is an "employee welfare benefit plan" within the meaning of ERISA, 29 U.S.C. §1002(1). Id. The plan grants Hartford "full discretion and authority to determine eligibility for benefits and to construe and interpret all terms and provisions of the Group Insurance Policy." Id. The plan states that an insured may change his or her beneficiary "at any time by: (1) making such change in writing on a form acceptable to the Hartford; and (2) filing the form with the Policyholder." Id. The plan also states that "[c]laims payable for loss will be paid as soon as written proof is received. . . . Payment for loss of life will be made: (1) according to the beneficiary designation in effect when payment is made, or, if none is in effect; (2) to your estate." Id.

[2] The Secretary relies upon the statement of facts as enumerated in Appellant's Memorandum in Support of its Motion for Summary Judgment. Throughout this brief, pages in the Appellant's Memorandum are cited as "Appellant's MSJ, p. __."

On November 12, 1991, RoJane executed a beneficiary designation wherein Alan Lewis (“Alan”), then her husband, was to receive 60 percent of her life insurance benefit and Katherine and Kristina Matschiner (individually "Katherine" and "Kristina" and collectively "Appellees"), her daughters from a previous marriage, were each to receive 20 percent. Appellant's MSJ, p. 3. In 1994, RoJane was diagnosed with lung cancer that metastasized to her brain. Id. RoJane's cancer went into remission, but she suffered severe cognitive impairment. Id. She subsequently left employment at Inacom and began to receive long-term disability benefits from Hartford. Id. Around this time, Hartford also determined that RoJane was eligible for a waiver of premium payments leaving her life insurance coverage intact. Id. In connection with Hartford's premium waiver determination, Inacom provided Hartford with the 1991 beneficiary designation that named Alan as a 60 percent beneficiary and the daughters as 20 percent beneficiaries respectively of RoJane's life insurance policy. Id.

In 2000, RoJane went into a coma from which she never recovered. Appellant’s MSJ, p. 3. RoJane and Alan's marriage was dissolved by a divorce decree on November 3, 2000. Id. The decree stated, in relevant part, "[t]hat each party is awarded their individual savings accounts, cash on hand, cash values of any life insurance policies currently owned by him or

her or the cash proceeds received or to be received therefrom and any pension and profit sharing plans that he or she may presently have with his or her employer." Id. at 3-4. RoJane passed away on April 13, 2005. Id. at 4. At that time, her total life insurance benefit was $122,000. Id. Hartford was notified of her death by her nursing home, and began efforts to locate Alan and the Appellees, the individuals named as beneficiaries in the 1991 beneficiary designation. Id. Hartford received a certified copy of RoJane's death certificate on February 22, 2007. The 1991 beneficiary designation awarding Alan 60 percent and Appellees each 20 percent of the life-insurance proceeds remained the only beneficiary designation on file with Hartford. Id.

Hartford was unable to make contact with Appellees or Alan until June 4, 2007, when Katherine called in response to a letter from Hartford regarding the insurance benefit. Appellant's MSJ, p. 4. Katherine stated that she had a more recent beneficiary designation than the 1991 document executed by RoJane, and Hartford requested that she forward it as soon as possible. Id. Katherine also stated in a letter dated June 4, 2007, that she had spoken to Alan and that he intended to waive his right to the benefits under the plan. Id. Hartford subsequently contacted Alan to verify this. He

informed Hartford, however, that he wished to claim his portion of the benefits. Id.

On June 5, 2007, Kristina faxed a copy of the divorce decree to Hartford. Appellant's MSJ, p. 5. The divorce decree did not contain a more recent beneficiary designation as had been previously indicated by Katherine, but instead contained the above-stated language that could be read as contradicting the 1991 beneficiary designation executed by RoJane. Id. at 4, 5. On June 12, 2007, Katherine contacted Hartford and learned that Alan was pursuing his share of the benefits. Id. at 4. Hartford explained that under the 1991 beneficiary designation on file, Alan was entitled to 60 percent of the benefits. Id. at 5. On June 13, Kristina called Hartford, and she received the same information. Id.

On July 11, 2007 – four weeks after Hartford asked Appellees to provide a more recent beneficiary designation – Alan filed a complaint with the Nebraska Department of Insurance ("DOI") because Hartford had not paid him benefits under the policy. Appellant's MSJ, p. 5. The DOI sent Hartford a letter on July 13, 2007, requesting a response and explanation regarding Hartford's failure to pay the benefits at that time. Id. On July 18, 2007, Hartford acted in accordance with plan documents and paid benefits pursuant to the 1991 beneficiary designation. Id. Hartford's decision was

based on the following considerations: (1) Appellees had not provided the updated designation that they purported to have; (2) the policyholder, Inacom, was out of business, and there was no evidence that the "more recent" beneficiary designation that Appellees claimed to have possession of was ever placed "on file" with the policyholder, as the policy at issue required; (3) while the divorce decree mentioned insurance, the 1991 beneficiary designation was never changed, and (4) Alan not only sought to enforce his right to benefits, but had complained to the DOI about the lack of prompt payment. Id. at 5-6.

After the release of payments, Appellees' counsel sent a letter on July 20, 2007, to Hartford stating that there was a "dispute as to how the insurance proceeds should be paid" and that Appellees had requested that Alan assign any interest he may have in the proceeds to the Appellees. Appellant's MSJ, p. 6. On July 26, 2007, Appellees' counsel "reiterated [his] previous request" and attached a beneficiary designation form dated December 12, 1997, which purported to allocate 40 percent of the benefits to Alan, and 30 percent each to Katherine and Kristina ("1997 beneficiary designation"). Id.

3. Decision below. Appellees filed a civil action in the District Court of Douglas County, Nebraska, on October 5, 2007, naming Hartford Life,

Hartford Life & Accident Insurance Company, and Alan as defendants.[3] On November 13, 2007, Hartford moved for removal to the United States District Court for the District of Nebraska. On January 6, 2009, on cross-motions for summary judgment, the district court issued an order granting Appellees' motion for summary judgment and reversing Hartford's decision to distribute the proceeds of the life insurance policy in accordance with the 1991 beneficiary designation. The district court ordered Appellees to produce evidence that they were the sole beneficiaries of the estate, or in the alternative, in the event that one beneficiary's interests are divested, that the plan requires redistribution to the remaining beneficiaries of the plan.

On January 26, 2009, the Supreme Court issued an opinion in Kennedy v. DuPont, ruling that plan administrators are bound by the terms of plan documents when rendering benefits determinations, and are thus prohibited from considering documents extraneous to the plan other than Qualified Domestic Relations Orders ("QDRO"). See nn. 5 & 12 infra. In light of the Kennedy decision, Hartford sought reconsideration from the district court. On February 13, 2009, the court denied Hartford's motion for reconsideration. It determined that Kennedy was distinguishable because

[3] Hartford Life & Accident Insurance Company was the sole plan administrator in this action, and Appellees erroneously included Hartford Life as a party. On September 18, 2009, the district court dismissed Hartford Life without prejudice from this action.

the Kennedy plan provided a formal process by which the beneficiary could waive, or disclaim, his or her interest in the benefit, a process that the court found not to exist in the instant plan. This distinction, the court said, was significant and "removes this action from the reaches of the Kennedy holding." Matschiner v. Lewis, No. 8:07CV435, 2009 WL 387737, at 2 (D. Neb. Feb. 13, 2009). The court thus stood by its prior ruling and concluded that Alan's "divested interest" should be distributed in equal portions to Katherine and Kristina, who are "the remaining named beneficiaries." Id. at 3.[4]

The district court certified its summary judgment order as a final judgment under Fed. R. Civ. P. 54(b) on October 5, 2009, and stayed a remaining state-law claim for unjust enrichment by Katherine and Kristina against Alan. Hartford timely filed its appeal on November 3, 2009.

[4] On January 16, 2009, the court had held an evidentiary hearing on the issue of the distribution of Alan's beneficiary interest. After reviewing the record, the court concluded that the divorce decree "effectively waived any interest Alan Lewis previously held in the proceeds from RoJane Lewis' life insurance policy." Id. at 3. Under the back-up beneficiary provision of the plan – which literally applied only when the designated beneficiary has predeceased the participant policy holder – the court then divided the proceeds equally between the Appellees rather than give effect to either the 1991 beneficiary designation on file, giving Alan a 60 percent share in the proceeds, or the 1997 beneficiary designation that Appellees' counsel had attached to his July 26, 2007, letter to Hartford, giving Alan a 40 percent share in the proceeds. Instead, the court accepted the divorce decree as waiving any interest Alan had in the life insurance benefit, giving him a 0 percent share, and the two daughters a 100 percent share, in the proceeds.

SUMMARY OF ARGUMENT

The district court clearly erred in attempting to distinguish Kennedy v. DuPont on the ground that the plan at issue in this case lacks a formal disclaimer provision. Kennedy holds 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 such as divorce decrees that are not themselves plan documents. See nn.5 & 11 infra (addressing QDROs) and explaining why they are not an exception to this rule). The footnote in Kennedy on which the district court relies - 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 – leaves open a question not presented in that case: whether a plan could effectively force unwanted plan benefits on an unwilling recipient by failing to provide a mechanism by which the beneficiary could renounce his or her interest. It does not suggest that a plan administrator is entitled to ignore the beneficiary designation on file if the plan makes no explicit provision for disclaiming benefits.

Under Kennedy, the plan administrator acted properly in distributing the benefits in accordance with plan terms. Here, designated beneficiary

Alan not only made no effort to disclaim his right to benefits but actively sought to enforce its prompt distribution. The question left open in Kennedy is thus also not presented in this case. Hartford therefore properly followed the Kennedy plan documents rule in distributing 60 percent of RoJane's life insurance proceeds to Alan, her ex-spouse, in accordance with the 1991 beneficiary designation form that was on file with the plan. This is so because, as recognized by the Court in Kennedy, the trust law principles that provide the underpinning of ERISA dictate that beneficiaries of a trust (including an ERISA plan) cannot be forced to receive, and thus may refuse to accept, plan benefits otherwise payable to them. This right of refusal exists whether or not a plan's terms provide for doing so; absent such refusal, however, the plan administrator must distribute benefits according to the plan's beneficiary designation form. As the Hartford-administered plan does not seek to impose an unwanted benefit on the beneficiary, the district court erred in determining that, when rendering a benefits determination, a plan administrator is permitted or required to ignore a validly-executed beneficiary designation in favor of what it considers to be a valid waiver agreed to by the designated beneficiary, if the plan documents lack a formal benefits disclaimer provision.

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 this conclusion, Kennedy took full account of the principle that no beneficiary can be forced to accept benefits against his or her will; and 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 divorce decrees 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 thus erred in distinguishing this case from Kennedy on the basis that the plan at issue here, unlike the one in Kennedy, does not expressly provide for disclaimer.

The decision of the district court is inconsistent with the administrative benefit-determination scheme requirements 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] This express statutory obligation follows directly from ERISA §404(a)(1)'s requirement that every employee benefit plan shall be established and maintained pursuant to a written agreement. 29 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

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[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, as in Kennedy, see 129 S.Ct. at 873, there is no argument that the Matschiner divorce decree is a QDRO. A QDRO is a domestic relations order (e.g., divorce decree) 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. ERISA §206(d)(3)(B)(i), 29 U.S.C. §1056(d)(3)(B)(i). In both Kennedy and in this case, the divorce decree could not be considered a QDRO because its purported waiver of ERISA benefits did not designate an "alternate payee," which the QDRO 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." ERISA §206(d)(3)(K), 29 U.S.C. §1056(d)(3)(K). Because there is no argument for treating the Matschiner divorce decree 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.

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). 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; 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 the instant matter, the district court ignored this requirement, holding that the Hartford policy's lack of a disclaimer provision distinguishes it from the DuPont plan in Kennedy and requires or allows the plan administrator to consider

extraneous documents when making its benefits determination. Such a decision misreads Kennedy and is contrary to the ERISA administrative benefit-determination scheme.

Contrary to the district court decision, with respect to application of ERISA's plan documents rule, Kennedy is substantively indistinguishable from this case. 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 documents 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 distribute the funds from the SIP account to the estate, but as the decedent had never changed the SIP beneficiary designation, 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 404(a)(1)(D) plan documents rule 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)"). [6]

In reasoning that potential beneficiaries could not be forced to take an otherwise payable but unwanted plan benefit, the Court determined that, since the DuPont plan contained a procedure for disclaimer, this concern was alleviated. As the district court in this case noted, the Court further

[6] While Kennedy recognized the right of trust beneficiaries to refuse to accept otherwise payable (yet unwanted) ERISA plan benefits, the Court also recognized that a plan may contain procedures for effecting such a refusal. It did not say, however, that the refusal right exists only if a plan spells out such procedures.

expressly stated 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. But while it is true that Kennedy did not squarely address the situation of a plan without an express disclaimer provision, and that situation is presented here, it by no means follows that Kennedy can be distinguished on that basis. Fundamentally, the right of a beneficiary to disclaim, i.e., not to be forced to take a benefit he or she does not want, does not depend on the presence of an express plan term providing for disclaimer. As Kennedy makes clear, the 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).[7] 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 a waiver of beneficiary rights does not

[7] 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 p. 11, U.S.Code Cong. & Admin.News 1974 pp. 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 would otherwise have been subject to traditional trust law. See also Pilot Life Ins. Co. Dedeaux, 481 U. S. 41, 65 (1983) (in context of long-term disability plan, recognizing legislative "expectations that a federal common law of rights and obligations under ERISA-regulated plans would develop.")

violate the anti-alienation provision if the beneficiary does not attempt to assign or alienate his interest to a third party).[8] 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 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).[9]

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[8] 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.

[9] 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

A person can thus refuse to accept any 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 is self-executing and requires no express incorporation by a plan in order to make the refusal permissible. But by the same token, the beneficiary designation in accordance with plan terms must also be given effect where there is no disclaimer by the designated beneficiary of the otherwise payable benefit. 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

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

26 U.S.C. §2518(b).

disclaimer or other refusal to accept the benefits otherwise payable to her, although the plan terms identified that such right was available to her. This created an apparent conflict between the divorce decree, which the Estate argued manifested an 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 Alan 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, Alan, as the designated beneficiary under the governing plan documents, did not seek to refuse those benefits; in fact, he went as far as contacting the Nebraska Department of Insurance to have the benefits distributed to him.

Thus, the issue left open by Kennedy – how plans should address waivers of otherwise payable benefits where the plan does not contain a formal procedure for addressing waivers – does not warrant a conclusion that a court with such a plan before it 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 the district court to disregard the 1991 beneficiary designation because the Hartford plan lacks a formal disclaimer provision misses the point of Kennedy entirely.

Indeed, the district court's interpretation of Kennedy creates an unnecessary administrative requirement that is not contained within, or contemplated by, ERISA and its case law. Pursuant to the 1991 beneficiary designation, Alan was unmistakably entitled to a plan benefit. That there is no formal plan procedure to renounce the benefits is of no moment since, in any event, as Kennedy recognized, Alan, if he wanted, could have refused to

accept the otherwise payable life insurance benefits. The only significance to a formal plan disclaimer provision is that it allows the plan to outline uniform procedures for beneficiaries to follow (provided, of course, such specified procedures do not unreasonably restrict a beneficiary's right to refuse benefits in violation of ERISA section 404(a)(1)(D)).[10] Because Alan did not express any desire to disclaim his benefit rights, and instead took affirmative action to effectuate his right as the designated beneficiary to his share of the life insurance proceeds, Hartford correctly disbursed the benefits to him pursuant to the plan documents available at the time of the distribution decision.

Thus, whether the plan has a formal disclaimer provision or not is irrelevant to the administrator's benefit determination. Once the determination is made in accordance with the governing plan documents, the beneficiary can, through a properly executed disclaimer, simply waive his or

[10] The plan administrator testified that Alan could have notified Hartford that he did not want the benefit, at which time Hartford would have contacted him to determine whether he intended to file a claim or waive his right to benefits. If he indicated that he intended to waive his claim, Hartford would have asked that he execute a signed document which affirmatively expressed this intent. Hartford would have provided him a disclaimer waiver and form, which Alan would have had to execute and return to them. Thus, even if the district court properly required the existence of a procedure to ensure that Alan could disclaim his right to the benefit, this procedure preserved his disclaimer rights. Appellant's Motion for Reconsideration, pp. 7-8.

her right to the potential benefit.[11] Except where the beneficiary has stated his or her refusal to accept otherwise payable benefits, ERISA clearly requires a plan administrator to pay benefits based upon the plan documents at the time of the decision and to distribute benefits to the beneficiary according to the beneficiary designation on file.[12]

> [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

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[11] Kennedy did not address the issue of what form a beneficiary's refusal to accept otherwise payable benefits should take. However, the Kennedy Court relied on the common law of trusts as the source for its finding that a beneficiary did have the power to disclaim his trust interest, and accordingly, any such refusal that is sufficient to disclaim under the applicable common law rules will be sufficient with respect to ERISA benefit plans.

[12] Kennedy explained how the treatment of Qualified Domestic Relations Orders governing the distribution of pension benefits in a divorce situation is consistent with this principle, finding that:

> The very enforceability of QDROs means that sometimes a plan administrator must look for the beneficiaries outside plan documents notwithstanding [§404(a)(1)(D)]; [§206(d)(3)(J)] provides that a "person who is an alternate payee under a [QDRO] shall be considered for purposes of any provision of [ERISA] a beneficiary under the plan." But this in effect means that a plan administrator who enforces a QDRO must be said to enforce plan documents, not ignore them.

129 S.Ct. at 876. Thus, in the very limited instances where the parties execute a valid QDRO, plan administrators are still considering "plan documents" for the purpose of making benefits determinations. However, as it has been conceded that the divorce decree in the instant matter does not satisfy the requirements for qualifying as a QDRO, they are not at issue in this case.

and records conforming to them to get clear distribution instructions, without going into court.

Kennedy, 129 S.Ct. at 875-76 (citations omitted).

Accordingly, there exists "no exemption from this duty when it comes time to pay benefits," and Appellees' "claim therefore stands or falls by 'the terms of the plan.'" Id. at 875. The administrator must adhere to the decedent's intent as manifested within plan documents or instruments. The contrary ruling by the district court ignores the statutory prescription embodied within section 404(a)(1)(D) for an administrator to act in accordance with plan documents unless doing so would violate ERISA. Insofar as Hartford's distribution to Alan was in accordance with the plan documents and not unlawful under the statute, the court was wrong as a matter of law in disregarding it and substituting its own judgment as to how the life insurance proceeds in RoJane's plan should be allocated.

CONCLUSION

The judgment of the district court should be reversed and remanded for the reasons stated in this brief.

Respectfully submitted,

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I certify that the foregoing brief complies with the type-volume limitation set forth in Fed. R. App. P. 32(a) (7) (B) (i). The brief contains 6,561 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a) (7) (B) (iii). The brief was prepared by using Microsoft Office Word, 2003 edition.

Dated: February 3, 2010

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I hereby certify that on February 3, 2010, I caused true and correct copies of the Secretary of Labor's Amicus Curiae Brief in paper form and on a CD-Rom in the Adobe Acrobat PDF Format to be served via Federal Express to the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit and the Amicus Curiae Brief in paper form to be served via Federal Express to counsel at the addresses listed below:

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