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**U.S. Supreme Court Awards Ex-Spouse \$400,000 in 401(k) Plan Benefits
 Despite Terms of Divorce Decree**

The U.S. Supreme Court ruled that a plan administrator properly distributed 401(k) plan benefits to an ex-spouse in accordance with the decedent’s beneficiary designation election despite the ex-spouse having waived her interest to benefits in their divorce decree. *Kennedy v. Plan Administrator for DuPont Savings and Investment Plan* (2009, S Ct) 2009 WL 160440. Although the case addressed a 401(k) plan, the ruling applies to ERISA defined contribution plans, defined benefit plans and death benefit plans.

Facts

William Kennedy worked for E. I. DuPont De Nemours & Company and participated in its 401(k) plan, which is an ERISA employee pension benefit plan. In 1971, William married Liv. In 1974, William named Liv as his beneficiary in accordance with plan provisions. In 1994, William and Liv divorced. Under the divorce decree, Liv waived any and all rights to William’s retirement benefits. (The divorce decree did not constitute a Qualified Domestic Relations Order or “QDRO.”) William died in 2001, without changing his beneficiary. Liv did not file any disclaimer of benefits with the plan. Upon William’s death, the plan distributed benefits to Liv based upon William’s beneficiary designation. William’s estate brought suit arguing that the divorce decree controlled, and the benefits should have been paid to William’s estate (i.e., his daughter).

401(k) Plan Provisions

The plan had a procedure which allowed participants to change their beneficiary and another procedure which allowed a beneficiary to disclaim any benefits. (Neither procedure was followed in this case.) The plan provided that if there was no surviving spouse and no

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beneficiary designation at the time of the participant's death, the plan would pay benefits to the participant's estate.

The "Plan Document" Rule

The Court held that the plan administrator met its obligations under ERISA when it paid out benefits in accordance with the terms of the 401(k) plan.

THE TAKEAWAYS:

- We recommend that you update your summary plan description ("SPD") and other employee communications to warn participants that following a divorce they must complete a beneficiary designation change form if they wish to remove their ex-spouse as beneficiary.
- You may wish to consider amending your retirement plans to provide that upon divorce, any designation of a former spouse is invalid unless resigned after the divorce. Nancy Keppelman has added this provision to numerous retirement plans. Nancy, or "Kep" as we call her, is the editor and a chapter author of "QDROs, EDROs & Division of Employee Benefits on Divorce, a Guide for Michigan Practitioners" (ICLE 2d ed). To contact Nancy directly for assistance with your plans, please email her at: kep@skalaw.com.