

## *In re Marriage of Steiner*

You thought concentrating your practice in family law would mean little or no contact with Federal Law or Federal Courts? Not so fast. The Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. #1001 *et. seq.* is a major federal law governing retirement plan benefits that can pre-empt state marital dissolution laws that may conflict with its provisions.

In *Kennedy v. Plan Administrator for Dupont Savings and Investment Plan* (2009) 129 S.Ct. 865 [2009 Cal. Fam. Law Monthly No. 3 at 65], the parties divorce decree divested wife from all of husband's retirement plan benefits. But he never changed the beneficiary designation after their divorce. He died, and his daughter, as Executor, asked Dupont to distribute the pension funds to his Estate. Relying on the beneficiary designation which still named his ex-wife, the Plan Administrator paid the balance of nearly \$400,000 to the former wife. The U.S. Supreme Court held that Wife's waiver in the divorce decree did not require the Plan Administrator to honor that waiver. The Supreme Court held that the Plan Administrator correctly performed its statutory duty under ERISA by paying the benefits to the ex-wife pursuant to the plan documents. The case emphasizes the need for family law attorneys to advise clients, in writing, to change beneficiary designations after entry of judgment, even when the beneficiary has agreed to waive such benefits. A waiver of rights to plan benefits did not trump (please excuse the phrase) an existing beneficiary designation made in accordance with the provisions of the plan.

In the *Steiner* case, the federal law was the Serviceman's Group Life Insurance Act of 1965 (38 U.S.C. #1965 *et. seq.*) (SGLIA). Here, the Judgment required husband to maintain wife as beneficiary of all his current active duty survivor and/or death benefits pending further order of court. Husband thereafter changed the beneficiary to his sister. After his death, the sister received the policy proceeds. Citing the Supremacy Clause of the US Constitution (U.S. Const., art. VI, cl.2), the Court of Appeal held that the federal enactment (SGLIA) establishes an order of precedence for identifying policy beneficiaries, and gives first priority to the beneficiary or beneficiaries identified by the service member in writing before the service member's death, in this case the sister, notwithstanding the order of court.

In one case (*Kennedy*), failure to change his post-Judgment beneficiary designation caused pension benefits to go to an unintended ex-spouse; in the other (*Steiner*), a seemingly wrongful post-Judgment change of life insurance beneficiary caused the death benefit proceeds to be distributed to a sister, not the court-ordered wife. Go figure. While pondering these unintended results (and perhaps calling your carrier), remember to insert a new preemption column on your settlement and post-judgment checklist.

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