

*Hillman v. Maretta*

This is getting to be an all too frequent scenario: husband designates W-1 as the beneficiary of his retirement plan or life insurance policy. Husband and wife divorce. Husband neglects to change the beneficiary designation. Husband remarries W-2. Husband dies. Who gets the retirement plan distribution or the life insurance death benefit, W-1 or W-2?

In the context of retirement plan benefits, *Kennedy v. Plan Administrator for Dupont Savings* [2009 Cal.Fam.Law Monthly 65 (March 2009)], held that an ERISA Plan Administrator must distribute retirement benefits to the beneficiary named in the plan documents, regardless of a state law waiver in a marital settlement agreement purporting to divest that beneficiary of his/her right to the benefits. *Andochick v. Byrd* [2013 Cal.Fam.Law Monthly 164 (May 2013)], held that once benefits are distributed, a state court action to recover such funds from the recipient is proper and state law waivers are not preempted by the retirement provisions of ERISA.

*Hillman v. Maretta* ascended to the U.S. Supreme Court in the context of a designated life insurance beneficiary. In this case, husband named W-1 as his designated beneficiary under a federal life insurance program. The couple divorced, but husband failed to change the beneficiary designation either at the time of the divorce or after he married W-2 four years later. Husband died. The death benefits from the insurance policy were paid to W-1, the designated beneficiary. W-2 (the surviving spouse) sued W-1 in a Virginia state court, seeking an order that W-1 pay the insurance proceeds to her as the surviving spouse. The Virginia trial court ruled in favor of W-2, the widow; however, the Virginia Supreme Court reversed and held that W-1, the designated beneficiary, was entitled to the proceeds. The U.S. Supreme Court affirmed. This was basically a preemption case, in that the life insurance policy was part of the Federal Employees' Group Life Insurance Act of 1954 (FEGSIA) and the congressional mandate was held to preempt the Virginia state statute, which was in conflict with the federal statute. The family law applicability of the conflict was illuminated in Justice Alito's concurring opinion, where he explained that under the provision of Virginia law at issue in the case, the surviving spouse was entitled to recover the life insurance proceeds from the former spouse. The Virginia state statute required this result even in the case where the insured manifested a clear contrary intent, such as providing specifically in a recent will that the proceeds were intended to go to another party – for example, the insured's children by a former marriage. Because the Virginia state statute overrides the insured's expressed intent (whether that intent was expressed via a beneficiary designation or through other reliable means), the state statute was in conflict with and preempted by the Federal Congressional Act.

California family lawyers are not customarily conversant with the *Supremacy Clause* of the U.S. Constitution, Art. VI, cl 2. The regulation of domestic relations is traditionally the domain of state law, but family law is not entirely insulated from conflict-preemption principles,

and the U.S. Supreme Court has recognized that state laws governing the economic aspects of domestic relations must give way to clearly conflicting federal enactments. The cases noted here require a renewed understanding of the intersection of state and federal law.

Issues concerning retirement benefits, estate planning, taxation, and health care coverage are among the areas affected, and thus compel our heightened attention. Lack of awareness of these often conflicting provisions does a disservice to our clients, let alone the impact upon necessary professional competence.

*Hillman v. Maretta* emphasizes once again the need for family law attorneys to advise their clients to promptly and timely change beneficiary designations after a marital dissolution judgment. Both wise counsel and prudent practice dictate that family law counsel advise clients in writing to change beneficiary designations in order to avoid the type of protracted litigation seen in the above-cited cases.

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