

No. \_\_\_\_\_

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**In The  
Supreme Court of the United States**

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COLLEEN A. EASTERDAY,

*Petitioner,*

v.

ESTATE OF MICHAEL J. EASTERDAY,

*Respondent.*

—◆—

**On Petition For Writ Of Certiorari To  
The Supreme Court Of Pennsylvania**

—◆—

**PETITION FOR WRIT OF CERTIORARI**

—◆—

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## QUESTIONS PRESENTED

1. Can an Estate bring an action in State or Federal Court, and prevail, against a Joint Survivor Annuity beneficiary specifically named in ERISA plan documents, to obtain those benefits after they have been distributed to that beneficiary based on a putative common law waiver, which is inconsistent with the ERISA plan documents?
  - a. When drafting ERISA, was Congress concerned with the named beneficiary's right to retain the benefits of a Joint Survivor Annuity after distribution?
  - b. Does ERISA preempt a state law breach of contract claim, based on a putative waiver in a post nuptial agreement, to recover funds that were paid to the named beneficiary of an ERISA qualified Joint Survivor Annuity benefit plan when the waiver is inconsistent with the ERISA plan documents?
  - c. Does the decision rendered by this Court in *Kennedy* mean that State and Federal Courts should disregard common law waivers that conflict with the beneficiary designation in a Joint Survivor Annuity made by the plan participant in accordance with the ERISA plan documents?

**PARTIES TO THE PROCEEDING**

**Petitioner (Appellee below)**

**COLLEEN A. EASTERDAY**

Represented by David R. Dautrich, Esq.,  
David R. Dautrich, Esquire, P.C.  
526 Court Street  
Reading, PA 19601

**Respondent**

**ESTATE OF MICHAEL J. EASTERDAY**

**(MATTHEW M. EASTERDAY, EXECUTOR OF  
THE ESTATE OF MICHAEL J. EASTERDAY was  
designated as the Appellant below)**

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**STATEMENT OF RELATED CASES**

- Estate of Michael J. Easterday, Deceased, in the Court of Common Pleas, Montgomery County, Pennsylvania, Orphans' Court Division No 2014-X3615. Order entered on March 22, 2016.
- In Re: Estate of Michael J. Easterday, Deceased, Appeal of Colleen A. Easterday, In the Superior Court of Pennsylvania, No. 2911 EDA 2016. Order entered on October 3, 2017.

**STATEMENT OF RELATED CASES – Continued**

- In Re: Estate of Michael J. Easterday, Deceased, Appeal of Matthew M. Easterday, In the Superior Court of Pennsylvania, No. 2946 EDA 2016. Order entered on October 3, 2017.
- In Re: Estate of Michael J. Easterday, Deceased, In the Supreme Court of Pennsylvania, Middle District, Appeal of Matthew M. Easterday, No. 15MAP2018. Judgment entered on June 18, 2019.
- In Re: Estate of Michael J. Easterday, Deceased, In the Supreme Court of Pennsylvania, Middle District, Cross Appeal of Colleen A. Easterday, No. 16MAP2018. Judgment entered on June 18, 2019.

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The Opinion of the Pennsylvania Supreme Court dated June 18, 2019 is reprinted at App. 1. The Opinion of the Pennsylvania Superior Court dated October 3, 2017 is reprinted at App. 34. The Memorandum Opinion of Montgomery County Senior Judge Stanley R. Ott dated March 22, 2016 is reprinted at App. 56.



## **STATEMENT OF JURISDICTION**

The Supreme Court of the Commonwealth of Pennsylvania issued its Opinion on June 18, 2019. This Petition for Writ of Certiorari is timely in that Petitioner has filed it within 90 days of June 18, 2019. The Court has jurisdiction pursuant to 28 U.S.C. §1257.



## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

This case involves the interpretation and application of the Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1144(a) Other laws, which reads as follows:

- (a) Supersedure; effective date

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this

title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.



## **STATEMENT OF THE CASE**

### **I. Overview of the Case**

The Supreme Court of the Commonwealth of Pennsylvania entered an Order, that, after distribution, a wife named as her husband's ERISA joint survivor annuity beneficiary, turn over her lifelong monthly benefits to an estate, which was not named as a contingent or alternate beneficiary in the ERISA plan documents, based on a putative waiver contained in a post nuptial agreement. This Order affirmed the holding of the Pennsylvania Superior Court dated October 3, 2017, which affirmed the Memorandum Opinion and Order of Montgomery County Senior Judge Stanley R. Ott dated March 22, 2016.

### **II. Background of the Case**

Michael Easterday died intestate. Mr. Easterday had made an irrevocable election that his wife, Colleen A. Easterday, Petitioner, be the beneficiary of his Joint Survivor Annuity, which is governed by the Federal Employee Retirement Income Security Act (ERISA). Mr. Easterday's adult son from a prior marriage, Matthew Easterday, was appointed Administrator of his estate.

The Administrator petitioned the Orphans' Court of Montgomery County, Pennsylvania, and argued that a post nuptial agreement signed by Michael and Colleen Easterday, acted as a bar to Colleen A. Easterday receiving her deceased husband's Fed-Ex Pension, despite the irrevocable beneficiary election executed by Michael Easterday with Fed-Ex, his former employer. The estate argued that a constructive trust existed and, therefore, the Petitioner was obligated to turn over her Joint Survivor and Annuity benefits to the estate once those proceeds were distributed to her. Mr. and Mrs. Easterday had reconciled and were never divorced at the time of Mr. Easterday's death.

Michael Easterday made an irrevocable election that his wife, Colleen A. Easterday, Petitioner, be the sole beneficiary of his Fed-Ex Pension, which is governed by the Federal Employee Retirement Income Security Act (ERISA). This irrevocable election designated both the beneficiary (his wife, Colleen) and the form of payment. Specifically, Mr. Easterday selected an option of 50% joint and survivor annuity, which would pay him a monthly benefit of \$971.85 and upon his death pay his named beneficiary, Colleen Easterday, a monthly benefit of \$485.93. Mr. Easterday submitted all of the necessary documents to Fed-Ex which were made part of the record in the lower court.

Mr. Easterday never changed the beneficiary designation or named a contingent or alternate beneficiary in the ERISA plan documents. Likewise, Mrs. Easterday never disclaimed her beneficiary status in the ERISA plan documents. Mrs. Easterday has been

receiving, from the ERISA plan administrator, her monthly joint survivor annuity benefits since the time of Mr. Easterday's death. As they are received, those payments are being held in escrow by Petitioner's attorney at the suggestion of the lower court pending the outcome of this appeal and are reported by Mrs. Easterday for tax purposes since the funds have been received by her, even though there is an existing Order confirmed by the Supreme Court of Pennsylvania that she must turn over her lifetime stream of joint survivor annuity benefits to the estate.

### **III. Proceedings Below**

An Evidentiary Hearing was held and the lower court heard testimony from Colleen A. Easterday and admitted various exhibits. The lower court rendered a Memorandum Opinion and Order dated March 22, 2016. (App. 56). Both parties filed Exceptions. Briefs and Supplemental Briefs were filed and on August 26, 2016 the Exceptions and Cross-Exceptions filed to the Opinion and Order of the lower court dated March 22, 2016 were deemed Denied pursuant to Pa. R.O.C.7.1(f). Thereafter, an Order was e-filed by the lower court on September 16, 2016 pursuant to Amended PA Rule of Appellate Procedure 1925 Opinion stating that "The Court's reasoning as to the entry of the Order appealed from can be found in the Opinion and Order of the Court entered on docket on March 22, 2016".

Both parties filed timely appeals, and cross appeals, to the Superior Court of Pennsylvania. The

Superior Court affirmed the decision of the lower court and both parties filed timely appeals, and cross appeals, to the Supreme Court of Pennsylvania. The Supreme Court of Pennsylvania entered an Order affirming the judgment of the Pennsylvania Superior Court.

This timely appeal was filed to the Supreme Court of the United States.



### **REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI**

Certiorari should be granted to resolve a spilt among the Courts of Appeals and State Supreme Courts over whether an estate can bring an action, and prevail, in State or Federal Court, against a Joint Survivor Annuity beneficiary specifically named in ERISA plan documents after the benefits have been distributed, because the beneficiary signed a putative common law waiver. In the *Easterday* case which is presently at bar, there was no QDRO, the controlling ERISA plan documents were never changed, the sole Joint Survivor Annuity beneficiary never disclaimed her interest in the plan documents, and the plan participant, the husband, never named an alternative or contingent beneficiary.

The Pennsylvania Supreme Court nonetheless held, in effect, that the common law waiver contained in a post nuptial agreement trumped the joint survivor annuity beneficiary designation and that the widowed

wife (Petitioner) had to turn over to the estate all monthly benefits that she had received, and would continue to receive for the rest of her life, pursuant to the ERISA protected joint survivor annuity set up by her husband. The question involved in this appeal was not answered by this Honorable Supreme Court of the United States in *Kennedy v. Plan Administrator DuPont Savings and Investment Plan et al*, 555 U.S. 285, 129 S.Ct. 865, 172 L. Ed. 2d 662 (2009) (see footnote 10).

Supreme Court Rule 10 identifies compelling considerations used by the Court in deciding whether to exercise its discretion to grant a Petition for Writ of Certiorari. One consideration is that the highest court of a State has decided an important question of Federal law that has not been, but should be, settled by this Court. Another consideration is when a State Court of last resort has entered a decision in conflict with another State Court of last resort or of a United States Court of Appeals. Both considerations are present in this case.

The Supreme Court of Pennsylvania has created a rule that circumvents the certainty and safeguards of ERISA, which protects both participants and beneficiaries of ERISA plans. The Court held that life-long monthly joint survivor annuity benefits must be turned over by the Petitioner, wife, the named ERISA beneficiary, after those benefits are distributed to her, to the estate, because the Court reasoned that the objectives of ERISA were satisfied simply because the plan administrator was paying monthly benefits to the

wife, i.e., the named beneficiary. The Pennsylvania Supreme Court thus allowed a collateral attack on ERISA benefits, which undermined one of the statute's principal objectives: providing certainty regarding the final distribution of benefits to named beneficiaries. See *Boggs v. Boggs*, 520 U.S. 833, 851 (1997) (holding that ERISA preempted State community property law because the law presented an obstacle to ERISA's purposes).

Allowing such collateral attacks upon named ERISA beneficiaries only redirects the pre-*Kennedy* uncertainty of plan administrators onto the plan beneficiaries. Furthermore, allowing an estate to pursue a claim against the named joint survivor annuity beneficiary in an ERISA plan document renders named beneficiaries' status meaningless and creates more uncertainty concerning who receives the ERISA benefits. See *Hillman v. Maretta*, 569 U.S. 483, 133 S.Ct. 1943, 186 L. Ed. 2d 43 (2013).

Finally, this issue is ripe for review by this Honorable Supreme Court of the United States because there is a growing split among the Courts of Appeals and State Supreme Courts regarding the ultimate disposition of ERISA qualified Joint Survivor Annuity Benefits and whether the beneficiary named in the plan documents should retain the benefits as indicated in the plan documents which express the intent of the participant when there is a common law waiver with inconsistent language.

The Courts that have addressed the issue after *Kennedy* have been split in their decisions as follows:

*Zangara v. International Painters et al*, 428 Fed. Appx 54, 2010 U.S. Dist. LEXIS 31244, at \*17 (Second Circuit 2011) (Holding that after *Kennedy* “a beneficiary’s waiver is effective only if it complies with the provisions of the pension plan document”. *Carmona v. Carmona et al*, 603 F.3d 1041, 1062 (Ninth Circuit 2010) (Court found that Congress did not intend to permit the reassignment of spouse benefits and the State Court’s reassignment of pension benefits into a constructive trust contravened the dictates of ERISA and was preempted by ERISA; also held that divorce decree was not a valid waiver of wife’s right to her survivor spouse benefits). *Estate of Lundy v. Lundy*, 352 P.3d 209 (Court of Appeals of Washington, Division 1 (2015)) (Held that ERISA preempted estate’s claims to account proceeds after distribution to former wife, absent proof of her agreement to waive her interest as beneficiary); *Staelens v. Staelens*, 677 F. Supp. at 5089 (2010) (finding that ERISA’s objectives would be compromised if estate could bring a claim against named beneficiaries to enforce common law waivers of ERISA benefits); *Eddings v. Eddings*, No. 09-5549, 2010 U.S. Dist. LEXIS 38490, at \*9 n.4 (N.D. Cal. Apr.19, 2010) (same); *VanderKam v. VanderKam*, 776 F.3d 883 (United States Court of Appeals, District of Columbia Circuit 2015) (Held that ERISA preempts any State law or State Court decree that would otherwise

defeat the spouse's vested annuity, and that State law cannot be used to seize a benefit that Federal law has vested in an ERISA beneficiary). *But see Kensinger v. URL Pharma, Inc.*, 674 F.3d 131 (Third Circuit 2012) (Reversed the District Court and held that on issue of first impression, ERISA did not bar estate from attempting to recover funds distributed to ex-wife).

This Court's review is warranted for all of these reasons.

**I. Review is warranted to resolve the confusion among the lower Federal Courts and State Supreme Courts regarding whether an estate can bring an action, and prevail, against a Joint Survivor Annuity beneficiary, specifically named in ERISA plan documents, to obtain those benefits after they were distributed to that beneficiary based on a putative common law waiver, which is inconsistent with the ERISA plan documents.**

In *Kennedy* this Court held that a waiver contained in a Divorce decree that was not a QDRO was not rendered invalid by the text of the anti-alienation provision contained in ERISA, but that the plan administrator properly disregarded the waiver owing to its conflict with the beneficiary designation made by the former husband in accordance with plan documents. Therefore, the United States Supreme Court has concluded that the waiver was invalid to the extent

that it was inconsistent with the beneficiary designation made by the former husband in accordance with the plan documents.

The Pennsylvania Supreme Court, citing the Third Circuit's decision in *Kensinger, id.* has failed to properly follow this binding precedent of the United States Supreme Court.

The *Easterday* case currently before this Court on Petition for Writ of Certiorari also involves a purported waiver which was inconsistent with the designation made by the Petitioner's deceased husband in the ERISA plan documents designating his wife as Joint Survivor Annuity beneficiary.

In *Easterday*, the Supreme Court of Pennsylvania, relying on *Kensinger, Id.* held that there was no indication that in drafting ERISA, Congress was concerned with the named beneficiary's right to retain the benefits. The Court held, to the contrary, that this consideration was wholly beyond the scope of ERISA because it was beyond the scope of plan administration. The Court further held that section 1144(a) of ERISA does not preempt a state law breach of contract claim to recover funds that were paid pursuant to an ERISA-qualified employee benefit plan. The Pennsylvania Supreme Court's decision, reasoning and holding is in conflict with *Kennedy* and all of the Federal Circuit Court decisions previously cited above.

Although this Court's ruling in *Kennedy* does not preempt all non-QDRO Divorce decree waivers, it does preempt, or at the very least declines to recognize and

follow, waivers to the extent that they are inconsistent with plan documents. Thus, the waiver at issue in *Easterday* is unenforceable by the Pennsylvania Courts.

The intent of Congress regarding the protection of ERISA beneficiaries was to give retirees peace of mind and a predictable income. *VanderKam Id.* More recently, Congress further refined the statutory framework with the Retirement Equity Act of 1984 (REA) Pub. L. No. 98-397, 98 Stat. 1426, which particularly sought to protect the rights of survivor spouses. These amendments modified and strengthened the expansive coverage for surviving spouses by providing economic security through “a stream of income to surviving spouses,” even after the participant’s death. *Carmona, Id.* quoting *Boggs, Id.*, 520 U.S. at 843, 117 S.Ct. 1754.

Among Congress’s core objectives when drafting ERISA was to ensure that employees and their beneficiaries would not be deprived of anticipated retirement benefits. *Pension Ben. Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 720 (1984). Congress wanted to ensure when workers and their beneficiaries fulfilled whatever conditions necessary to receive a vested benefit, that they actually received that benefit. *Nachman Corp. v. Pension Ben. Guaranty Corp.*, 466 U.S. 359, 375 (1980). This creates contractual reliance in the sense that the plan participant reasonably expects that his named ERISA beneficiary will not only get the benefits, but, will get to keep those benefits. This is what beneficiary status means. See *Hillman v. Maretta*, 569 U.S. 483, 133 S.Ct. 1943, 186 L. Ed. 2d 43 (2013).

By allowing the estate to pursue a claim against Petitioner, wife, once she receives the proceeds from the Joint Survivor Annuity, the Pennsylvania Supreme Court has allowed a collateral attack on ERISA benefits which undermine one of the statute's principal objectives: providing certainty regarding the final distribution of benefits to named beneficiaries. *See Boggs v. Boggs*, 520 U.S. 833, 851 (1997) (holding that ERISA preempted state community property law because the law presented an obstacle to ERISA's purposes).

*Kennedy* should not be interpreted as holding that ERISA is concerned only with tidy and cost-effective plan administration. Such an interpretation by the Pennsylvania Supreme Court relying on the Third Circuit Court of Appeals decision in *Kensinger, Id.*, ignored the intent of Congress that ERISA is also concerned with ensuring that the named beneficiaries actually receive the benefits of ERISA-governed plans, and get to keep those benefits, not simply be a conduit for the money to flow to an estate. *See Boggs*, 520 U.S. at 845 (“the principal object of the statute is to protect plan participants *and beneficiaries*.”) (emphasis added) (citing *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 90 (1983)) (“ERISA is a comprehensive statute designed to promote the interests of employees *and their beneficiaries* in employee benefit plans”) (emphasis added); 29 U.S.C. section 1001(b) (“it is hereby declared to be the policy of this act to protect . . . the interests of participants in employee benefit plans *and their beneficiaries*”) (emphasis added). *See also Hillman, Id.*

ERISA achieves the goal of the named beneficiary receiving the plan benefits by requiring plan administrators to distribute plan proceeds by reference only to the beneficiaries named in the plan documents. See *Kennedy*, 192 S.Ct. at 875-76.

A participant is master of his own ERISA plan and both the plan participant and beneficiaries can change, or disclaim, their interest under ERISA plans if proper procedures are followed. See *McMillan v. Parrott*, 913 F.2d 310, 312 (6th Cir. 1990). As this Court stated in *Kennedy Id.* plan documents must be amended by plan rules. See *Kennedy*, 129 S.Ct. at 877 (“The plan provided an easy way for the participant to change the designation, but for whatever reason he did not. The plan provided a way to disclaim an interest in the plan, but the beneficiary did not follow it”); *Id.* The same is true in the *Easterday* case at bar.

Michael Easterday, deceased husband of Petitioner, made his intentions clear and unambiguous in the plan documents and he made no effort, whatsoever, to change his beneficiary designation. Likewise, Petitioner, wife of Mr. Easterday, made no effort, whatsoever, to disclaim her interests in the ERISA plan documents. In selecting the joint survivor annuity option at the time of his retirement both Mr. Easterday and his wife expected that he would receive, and keep, payments during his lifetime and that she would receive and keep a lesser monthly payment, which she would keep, for her entire lifetime. This stream of income was intended to provide for the long-term financial security of both the plan participant and his wife.

(Mr. and Mrs. Easterday were never divorced). ERISA’s surviving spouse benefits in §1055 were created in part “to ensure a stream of income to surviving spouses”. *Boggs*, 520 U.S. at 843.

The Supreme Court also concluded in *Boggs*, that ERISA preempted State law even after benefits have been disbursed to beneficiaries. *Boggs*, *Id.* 520 at 842 (rejecting the argument that State law can apply when it affects “only the distribution of plan proceeds after they have been disbursed by the {plan} and thus nothing is required of the plan”).

The United States Court of Appeals, District of Columbia, in *VanderKam*, *Id.* noted that “ERISA protects retirement benefits for millions of pension plan participants and their beneficiaries.” 29 U.S.C. §1001(b), noting that the stability of retirement benefits directly affects the national economy, *Id.* §1001(a). “Congress acted to ensure that accrued benefits remain unaltered by individuals and States alike.” *VanderKam*, *Id.* noted that the protection of beneficiaries – especially spouses – was a paramount ERISA objective. The Court went so far as to state that “The crown jewel of ERISA’s spousal protection, the qualified joint and survivor annuity, provides monthly support for surviving spouses in the event of a participant’s death, whether occurring before or after retirement.” *Id.* §1055(a).

In *Hillman v. Maretta*, 569 U.S. 483, 133 S.Ct. 1943, 186 L. Ed. 2d 43 (2013), the United States Supreme Court invalidated a State law that imposed personal liability on beneficiaries of life insurance and

held that, with a beneficiary's designation, "comes the expectation that the . . . proceeds will be paid . . . *and that the beneficiary can use them*" 133 S.Ct. at 1953 (emphasis in the original). The Court went on to state that "The term 'beneficiary' itself . . . would be meaningless if the only effect of a designation were to saddle the normal beneficiary with liability under State law for the full value of the proceeds." *Id.* at 1956. For this reason, the Court held that "Where a beneficiary has been duly named, the . . . proceeds she is owed under [Federal law] cannot be allocated to another person by operation of State law." *Id.* at 1953. The same reasoning applies with equal force to ERISA beneficiaries and the Joint Survivor Annuity benefits of Mrs. Easterday cannot properly be turned over to an estate by Order of a Pennsylvania court.

*Hillman, Id.* cites two other United States Supreme Court cases which upheld an employee's unfettered freedom of choice in selecting a beneficiary and to *ensure the proceeds actually belong to that beneficiary* (emphasis added). *Hillman Id.*, citing *Wissner v. Wissner*, 338 U.S. 655, 70 S.Ct. 398, 94 L.Ed 424 (1950); and *Ridgway v. Ridgway*, 454 U.S. 46, 102 S.Ct 49, 70 L. Ed.2d 39 (1981).

It should be noted that *Kensinger* did not involve a dispute over Joint Survivor Annuity Benefits, rather, it concerned the disposition of proceeds from a 401(k) plan. The *VanderKam* Court referencing *Hillman*, distinguished that ERISA benefits such as life insurance and 401(k) plans are not subject to the rigorous waiver provisions that govern survivor annuities.

The Ninth Circuit may be the only Circuit to have considered the *Kennedy* question in the survivor annuity context. In *Carmona v. Carmona*, 603 F.3d 1041, 1061 (Ninth Cir. 2010), the Court concluded that permitting a “constructive trust on the proceeds of a pension plan . . . would allow for an end-run around ERISA’s rules and Congress’s policy objective of providing for certain beneficiaries, thereby greatly weakening, if not entirely abrogating ERISA’s broad preemption provision.” *Id.* The *VanderKam*, *Id.* Court agreed and held that survivor annuity waiver provisions are aimed at preventing the enforcement of invalid waivers. In *Easterday*, the estate initially asked the lower court to impose a constructive trust on the joint survivor annuity benefits received by wife, Petitioner, the named beneficiary. The lower court Order was that Petitioner turn over all of the joint survivor annuity benefits. This Order of the Pennsylvania Court cannot stand as it is preempted by ERISA.

Evidence produced at the time of hearing was uncontradicted that Mr. Easterday intended that his wife receive his ERISA joint survivor annuity benefits. This is exactly what happened in *Staelens Id.*, where the Court held that statements made by the ex-husband as to his intent to retain his ex-wife as beneficiary on his 401(k) account fell squarely within the Fed.R.Evid. 803(3) exception to hearsay. This is a different scenario from *Kensinger Id.*, where the Third Circuit’s opinion states that the ex-husband neglected to remove his ex-wife as beneficiary. Many States have enacted laws to address situations where participants may have

neglected to remove or, for whatever reason, have not changed beneficiaries, and this court has preempted those statutes when they are contrary to the intent of Congress and the controlling Federal laws. The *Easterday* case does not involve neglect. As noted, all of the evidence points to Mr. Easterday's decision for Mrs. Easterday to be the beneficiary of his joint survivor annuity benefits, which he selected. He wanted her to be the recipient of his joint survivor annuity benefits.

The estate's claim against Petitioner regarding the joint survivor annuity monthly income benefits directly undermine one of ERISA's core objectives, and also the express intentions of the deceased plan participant. Numerous courts have expressed their concern that allowing these sorts of collateral attacks simply redirects uncertainty from plan administrators, where it existed before *Kennedy*, to beneficiaries. The Court stated in *Staelens v. Staelens*, 677 F.Supp. 2d at 507, "The Supreme Court may have closed one door to litigation against plan administrators but it may well have opened another to litigation between family or former family members". Therefore, the certainty created by *Kennedy* for plan administrators is of no value to beneficiaries, whom ERISA is also intended to protect, if they are subject to collateral attacks regarding their right to retain ERISA benefits.

This is especially true in Petitioner's case where she has been Ordered to turn over her ERISA monthly joint survivor annuity payments. This means that the estate will be receiving payments to which it would otherwise not be entitled for the entire lifetime of the

Petitioner. The estate is using the Petitioner as a conduit to receive her lifelong annuity benefits to which no beneficiary of the estate would otherwise be entitled. The plan participant named no contingent beneficiaries.

Congress did not intend that joint survivor annuity beneficiaries could be used as nothing more than a mechanism to pass a life long stream of income meant for them straight through to an estate that was never mentioned in the plan documents as a contingent beneficiary. The cases cited in this Writ support such a conclusion and the Order of the Supreme Court of Pennsylvania affirming that Petitioner must turn over her Joint Survivor Annuity benefits to the estate should be preempted as contrary to the intent of ERISA and vacated accordingly.

Furthermore, in *Easterday*, the post nuptial agreement specifically provided, in two separate paragraphs, that the parties “Shall execute whatever documents necessary to effectuate this agreement”. It should be noted that after Mr. Easterday began collecting his portion of the Joint Survivor Annuity, the interest of Mrs. Easterday had vested and she could not be removed as a Joint Survivor Annuity beneficiary with the exception, possibly, of a QDRO Order, and no QDRO or court order of any kind for that matter, was ever entered in this case.

All of that said, even though the ERISA plan provided an easy way for Mr. Easterday to change the Joint survivor annuity designations before he began

collecting benefits, for whatever reason, he made no effort whatsoever to change the beneficiary designation in the plan documents. Even though the ERISA plan documents provided a simple way for Mrs. Easterday to disclaim her interest in the joint survivor annuity, she made no effort to do so in the time allowed by the plan documents. This was exactly the conduct in *Kennedy, Id.* which led this Supreme Court to conclude that the plan administrator properly disregarded the waiver owing to its inconsistency with the designation made by the former husband in accordance with the plan documents. *Kennedy Id.*

A postnuptial agreement cannot trump specific plan documents and since a valid disclaimer does not appear in the ERISA plan documents, Mrs. Easterday is entitled to receive and keep the survivor annuity benefits because the waiver was never effectuated and therefore, is invalid and not controlling. In any event, a State law or State decree is preempted and the Order of the Pennsylvania Supreme Court should not stand.

Perhaps, by signing the PNA, wife gave her husband the opportunity to name another beneficiary if he so chose. The undisputed evidence is that Mr. Easterday chose not to, and made no effort whatsoever to change his beneficiary, or, to name an alternate beneficiary. On the contrary, as noted earlier, the uncontradicted evidence was that Mr. Easterday wanted his wife to have his ERISA joint survivor annuity after he passed away. The language of the post nuptial agreement did not alter the designation of his wife as his joint survivor annuity benefits beneficiary in the

ERISA plan documents. The post nuptial agreement does not mention the words ERISA or joint survivor annuity. In any event, the waiver is not valid and cannot be enforced by the Pennsylvania courts.

This is similar to *Staelens, Id.*, which was also similar to *Kennedy Id.*

The Court in *Staelens* noted that the Supreme Court decision in *Kennedy* did not preclude the possibility of post-distribution lawsuits among family members. *See Kennedy*, 129 S.Ct. at 875 n. 10. The Court in *Staelens* went on to state “In this Court’s estimation such lawsuits would appear to go against the various interests which the Supreme Court deemed served by a uniform administrative scheme . . . the point is that by giving 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, . . . It is difficult to believe that these interests would simply fall by the wayside once funds had been distributed, particularly in cases, such as the one at bar, where the participant had the opportunity post-divorce to either file a QDRO with the plan administrator or simply change the beneficiary form . . . Nadine’s “waiver”, if waiver it was, does not preclude her from retaining the 401(k) funds distributed to her”. *Staelins Id.*

As in *Staelens Id.*, the post nuptial agreement did not modify, let alone revoke or disclaim, the beneficiary designation in Mr. Easterday’s ERISA joint survivor

annuity. Mrs. Easterday's waiver, if waiver it was, simply opened the door for Mr. Easterday to change the beneficiary designation. Nothing in the post nuptial agreement barred Mr. Easterday from continuing to designate his wife as beneficiary of his joint survivor annuity. At best, the post nuptial agreement simply gave Mr. Easterday the right to retain his account, including the right to designate the beneficiary of his choice.

Accordingly, as was the case in *Staelens*, Mr. Easterday was entitled to conclude that, even if Mrs. Easterday had "waived the benefits" at the time she signed the post nuptial agreement, his decision thereafter not to change the beneficiary amounted to a redesignation of his wife as his beneficiary. Mr. Easterday was fully aware that his wife was the beneficiary of his joint survivor and annuity and the uncontradicted evidence undisputedly indicates a purposeful decision on his part to retain her as beneficiary. It is worthy of note that in *Kensinger* the Third Circuit did not address the issue of whether the ex-husband chose to give his 401(k) to his ex-wife after he died because that argument was not raised previously. *Kensinger, Id.* is again distinguishable from the facts in the *Easterday* case.

In *Boggs, Id.*, the United States Supreme Court also explained that Congress prohibited assignments out of a concern that "retirees could find their retirement benefits reduced by substantial sums because they have been diverted to testamentary recipients." *Id.* at 852, 117 S.Ct. 1754. In addition to a substantially reduced predictable retirement income, Mrs. Easterday

also faces adverse tax consequences as a result of the Supreme Court of Pennsylvania's decision that she turn over monthly income payments, for the rest of her life, to an estate. There is no question that Mrs. Easterday has never filed a "qualified disclaimer of benefits" as defined by the Tax Code, 26 U.S.C. section 2518, which would have the effect of switching the beneficiary to an alternate . . . determined according to a valid beneficiary designation made by the deceased. *Staelins Id.*

Furthermore, the *Kennedy* Court stated that "Depending on the circumstances, a survivor spouse **has a right to a survivor's annuity** or to a lump sum payment on the death of the participant, unless the spouse has waived the right **and** the participant has **eliminated the survivor annuity benefit or designated another beneficiary**" (emphasis added). Citing *Boggs*, supra at 843, 117 S.Ct. 1754; 29 U.S.C. section 1055(a)(b)(1)(C), (c)(2). Since Mr. Easterday never eliminated the survivor annuity benefit or designated another beneficiary, his wife has a right to the survivor's annuity and even though, by Order of the Supreme Court of Pennsylvania, she is serving only as a conduit to pass money to an estate, she nonetheless has to bear the tax consequences of being the beneficiary of money that she cannot keep because she has in no way disclaimed the survivor annuity benefits.

Last, the estate should not be able to bring a post-distribution suit against Mrs. Easterday under a theory that creditors can sue named beneficiaries to recover ERISA plan benefits once those benefits have

been distributed. This is not a case where a creditor has a claim or liquidated judgment in a specific dollar amount and it is simply seeking to collect from Mrs. Easterday's assets. This is a case where, by Court Order, Mrs. Easterday is being forced to turnover ERISA joint survivor annuity benefits to an estate on a monthly basis for the remainder of her life.

This is a much different scenario because Mrs. Easterday owes nothing to the estate of her husband and whomever those unnamed beneficiaries may be. The estate is seeking the turnover of a lifetime stream of guaranteed income, not the satisfaction of a money judgment against a debtor. In this case, the only party that has a claim for the ERISA joint survivor annuity benefits in question is the ERISA named beneficiary herself, Colleen A. Easterday, Petitioner.

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## CONCLUSION

The Petition for Writ of Certiorari should be granted. An estate cannot bring an action and prevail against an ERISA joint survivor annuity beneficiary to obtain benefits after they are distributed to that beneficiary on the basis of a putative common law waiver which is inconsistent with the ERISA plan documents. Pennsylvania state law should, therefore, be preempted to the extent of any conflict between the ERISA named beneficiary in the plan documents and whatever inconsistent language might be contained in a post nuptial agreement.

The ERISA named joint survivor annuity beneficiary should not have to turn over her lifelong monthly benefits to the estate upon distribution to her because this would be contrary to the intent of Congress to protect both plan participants and beneficiaries of ERISA qualified plans.

It should therefore be Ordered, that the Judgment of the Supreme Court of Pennsylvania be reversed.

Respectfully submitted,

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