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No. 07-636

In the Supreme Court of the United States

KARI ELLEN KENNEDY, PETITIONER,

v.

PLAN ADMINISTRATOR FOR DUPONT SAVINGS AND INVESTMENT PLAN, ET AL., RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

By order dated October 28, 2008, the Court directed the parties to file supplemental briefs addressing the following question: "whether 29 U.S.C. § 1104(a)(1)(D), mandating administration of a plan in accordance with plan documents, required that the distribution in question be made to Liv Kennedy, even on the assumption that a waiver of her interest was not otherwise subject to statutory bar."

CORPORATE DISCLOSURE STATEMENT PURSUANT TO RULE 29.6

Respondent E. I. du Pont de Nemours and Company is a publicly held corporation. It has no parent corporation, and no publicly held company owns ten percent or more of its stock.

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INTRODUCTION AND SUMMARY OF ARGUMENT

ERISA requires that covered employee benefit plans must be administered in accordance with the terms of the documents governing the plan, including those governing a participant's beneficiary designation. *See* 29 U.S.C. §§ 1101(a), 1102(a)(1), 1102(b)(4), 1104(a)(1)(D); *see also* § 1101(a). Here, William designated Liv as his beneficiary under the Savings and Investment Plan and – although he could have done so by submitting a simple form during the seven years between the Kennedys' divorce and his death – he never revoked that designation. Thus, Liv was the designated beneficiary under the SIP at William's death. Furthermore, although the Plan's terms required it to pay benefits pursuant to a QDRO, it is undisputed that the Kennedys' divorce decree was a non-qualified order.

Accordingly, if the Plan had paid William's account balance to his estate pursuant to the purported waiver in the divorce decree, rather than to Liv as his designated beneficiary, it would have violated the terms of the Plan. Moreover, because the statute requires that benefits be paid to the designated beneficiary, there is no gap for courts to fill in by creating federal common law directing payment to anyone else. *See Mertens v. Hewitt Assocs.*, 508 U.S. 248, 259 (1993); *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 109 (1989); U.S. Am Br. 28-29. The United States and AARP, American Benefits Council (joined by the ERISA Industry Committee and the National Association of Manufacturers), and Western Conference of Teamsters Pension Trust Fund support this conclusion.

ARGUMENT

BECAUSE ERISA REQUIRES THAT A PLAN BE ADMINISTERED AND BENEFITS DETERMINED IN ACCORDANCE WITH THE PLAN DOCUMENTS, THE PLAN WAS OBLIGATED TO PAY WILLIAM'S ACCOUNT BALANCE TO LIV AS HIS DESIGNATED BENEFICIARY.

I. ERISA PLANS MUST BE ADMINISTERED IN ACCORDANCE WITH THE PLAN DOCUMENTS.

A. ERISA Requires That Benefits Be Paid To Beneficiaries Determined Pursuant To The Plan Documents.

ERISA requires that "[e]very employee benefit plan shall be established and maintained pursuant to a written instrument." § 1102(a)(1). The plan must "specify the basis on which [benefit] payments are made . . . from the plan" (§ 1102(b)(4)), and the administrator must make payments to the "'beneficiary' . . . designated by a participant, or by the terms of . . . [the] plan" (§ 1002(8)). Furthermore, the plan must hold its assets for the exclusive purpose of providing benefits to participants and beneficiaries (as well as defraying reasonable administrative expenses). § 1103(c). Finally, a plan administrator, acting as a fiduciary, must "discharge his duties . . . in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of [Title I] and [Title IV] of [ERISA]." § 1104(a)(1)(D). *See* George A. Norwood, *Who Is Entitled*

to Receive a Deceased Participant's ERISA Retirement Plan Benefits – an Ex-Spouse or Current Spouse?, 33 Gonz. L. Rev. 61, 72-74 (1997/1998).

Accordingly, this Court has recognized that plans must distribute benefits in accordance with the governing plan documents. *See*, *e.g.*, *Egelhoff v. Egelhoff*, 532 U.S. 141, 147-148 (2001); *Boggs v. Boggs*, 520 U.S. 833, 845-846 (1997); *Varity Corp. v. Howe*, 516 U.S. 489, 511 (1996); *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 83 (1995). *See also Schmidt v. Sheet Metal Workers' Nat'l Pension Fund*, 128 F.3d 541, 546 (7th Cir. 1997), *cert. denied*, 523 U.S. 1073 (1998).

The "plan documents" requirement serves two principal purposes.

1. First, it protects the interests of participants and beneficiaries. It ensures "that every employee may, on examining the plan documents, determine exactly what his rights and obligations are under the plan." *Curtiss-Wright*, 514 U.S. at 83, quoting H.R. Rep. No. 93-1280, at 297 (1974). "[T]he payment of benefits . . . [is] a central matter of plan administration" (*Egelhoff*, 532 U.S. at 148) and the ERISA "scheme . . . is built around reliance on the face of plan documents" (*Curtiss-Wright*, 514 U.S. at 83). Thus, the "plan documents" requirement ensures that rightful beneficiaries are correctly determined and promptly paid. *See* 2 Daniel C. Knickerbocker, Employee Benefits Guide § 24.15, at 24-51 to 24-53 (2008).

2. Second, the "plan documents" requirement "enables plan administrators . . . [to] manage the plan on a day-to-day level" in a practical and efficient manner.

Curtiss-Wright, 514 U.S. at 82. This is "[o]ne of the principal goals of ERISA" (*Egelhoff*, 532 U.S. at 148), and "[t]he most efficient way [for a plan] to meet [its] responsibilities is to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursements of benefits." *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 9 (1987).

The legislative history reflects this congressional policy. Congress recognized that employee benefit plans are not mandatory but rather are optional at the election of the employer. *See* H.R. Rep. No. 93-533, at 1, 9 (1973). Concerned that the costs of administering employee benefit plans could deter the establishment and growth of such plans, Congress sought to "strike a balance between providing meaningful reform and keeping costs within reasonable limits." H.R. Rep. No. 93-807, at 15 (1974). Congress therefore "weighed carefully the additional costs to the employers and minimized these costs to the extent consistent with minimum standards for retirement benefits." H.R. Rep. No. 93-779, at 2 (1974). *See Beck v. Pace Int'l Union*, 127 S. Ct. 2310, 2314 (2007) (benefit plans are voluntary); *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 376 (2002) (there is a "'public interest in encouraging the formation of employee benefit plans'") (citation omitted).

This Court has recognized "the congressional goal of 'minimiz[ing] the administrative and financial burden[s]' on plan administrators." *Egelhoff*, 532 U.S. at 149-50 (citation omitted). *See also LaRue v. DeWolff, Boberg & Assocs., Inc.*, 128 S. Ct. 1020, 1027 (2008) (Roberts, C.J., concurring). Congress thus had

"competing purposes": the "desire to offer employees enhanced protection for their benefits, on the one hand, and, on the other, its desire not to create a system that is so complex that administrative costs, or litigation expenses, unduly discourage employers from offering welfare benefit plans in the first place." *Varity Corp.*, 516 U.S. at 497. *See also Mertens*, 508 U.S. at 262-63.

The "plan documents" requirement enables administrators to "make payments simply by identifying the beneficiary specified in the plan documents." *Egelhoff*, 532 U.S. at 148. "Pension plans are high-volume operations" and "rely heavily on forms, such as designations of beneficiaries." *Blue v. UAL Corp.*, 160 F.3d 383, 386 (7th Cir. 1998). Furthermore, administrators typically are not lawyers, and the pension system could not effectively operate if advice of counsel routinely had to be sought to process claims. *See Boggs*, 520 U.S. at 853 ("Congress could not have intended that pension benefits from pension plans would be given to accountants and attorneys" to administer). *See also* Norwood, *supra*, at 79-80. Thus, the "plan documents" requirement enables administrators to pay benefits – efficiently, promptly, consistently, and correctly – in accordance with the documents establishing the plan.

In sum, Congress understood that efficiency and administrability are critical to the sound operation of the pension system. *See Egelhoff*, 532 U.S. at 149 n.3 (referring to ERISA's central "objective of efficient plan administration"). ERISA provides "unyielding rules" rather than "flexible standards" to be applied to the particular facts and circumstances of each individual case. *Fox Valley & Vicinity Constr. Workers Pension*

Fund v. Brown, 897 F.2d 275, 283-84 (7th Cir.) (en banc) (Easterbrook, J., dissenting), *cert. denied*, 498 U.S. 820 (1990). "Rules requiring payment to named beneficiaries yield simple administration, avoid double liability, and ensure that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules." *Id* at 283.[1]

B. Payment Of Pension Benefits In Accordance With A QDRO But Not A Non-Qualified Order Is Required By The "Plan Documents" Provisions.

Contrary to petitioner's contention (*see* Pet. Reply Br. 28), the payment of pension benefits pursuant to a QDRO, but not pursuant to a non-qualified domestic relations order, is required by ERISA's "plan documents" provisions. Indeed, ERISA expressly provides that "[e]ach pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order" (§ 1056(d)(3)(A)), and the SIP so provides. *See* SIP, p. 48 (D.I. 33, Ex. 15, D0088). Because plans must provide for payment in accordance with QDROs, administrators are complying with rather than departing from the plan when benefits are paid pursuant to a QDRO. *See Carland v. Metropolitan Life Ins. Co.*, 935 F.2d 1114, 1121 (10th Cir.), *cert. denied*, 502 U.S. 1020 (1991).

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[1] Furthermore, as this Court has explained, the costs of expense, delay, and uncertainty are "ultimately borne by the beneficiaries." *Egelhoff*, 532 U.S. at 150.

These QDRO provisions promote the same congressional policy of efficiency, simplicity, and consistency as the "plan documents" requirement. The language, history, and purposes of the QDRO provisions are discussed in respondents' opening brief. *See* Resp. Br. 29-32, 51-52. In basing the QDRO provisions on objective criteria that are easily applied by plan administrators, Congress sought to minimize the burden on plans and eliminate uncertainty by requiring that administrators be furnished, in the order itself, with the statutorily enumerated information necessary to determine whether the order is "qualified." *See* Resp. Br. 30-31; *Hamilton v. Washington State Plumbing & Pipefitting Indus. Pension Plan*, 433 F.3d 1091, 1096-97 (9th Cir.), *cert. denied*, 127 S. Ct. 86 (2006); *Carland*, 935 F.2d at 1122.[2]

Furthermore, ERISA contemplates that any order the parties intend to be a QDRO be submitted to the plan administrator to determine whether it is "qualified." *See* § 1056(d)(3)(G)(i)(II); *Hamilton*, 433 F.3d at 1097 & n.7; *Dorn v. Int'l Bhd. of Elec. Workers*, 211 F.3d 938, 942, 943-44 (5th Cir. 2000); *Fox Valley*, 897 F.2d at 783 (Easterbrook, J., dissenting); U.S. Am. Br. 26. Like the "plan documents" requirement, the QDRO provisions

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[2] Petitioner's reliance (Pet. Reply Br. 29) on cases treating orders as qualified if they substantially comply with ERISA is misplaced; here, the divorce decree was never intended to be a QDRO and did not come close to meeting the statutory requirements.

ensure that the plan "is on notice of its exact obligations." *Hamilton*, 433 F.3d at 1097.[3]

II. THE DECISIONS THAT HAVE RECOGNIZED COMMON-LAW WAIVERS CONTRARY TO PLAN DOCUMENTS ARE INCORRECT.

The Sixth and Second Circuits, and the Michigan Supreme Court, have correctly held that beneficiaries must be determined pursuant to ERISA's "plan documents" requirement rather than the theory of waiver under federal common law. *See Metropolitan Life Ins. Co. v. Marsh*, 119 F.3d 415, 420-21 (6th Cir. 1997); *Krishna v. Colgate Palmolive Co.*, 7 F.3d 11, 14-16 (2d Cir. 1993); *Sweebe v. Sweebe*, 712 N.W.2d 708, 711-14 (Mich. 2006). *See also McGowan*, 423 F.3d at 244-48 (opinion of Van Antwerpen, J.); *Estate of Altobelli v. International Bus. Machines Corp.*, 77 F.3d 78, 82 (4th Cir. 1996) (Wilkinson, C.J., dissenting); *Fox Valley*, 897 F.2d at 282-83 (Easterbrook, J., dissenting), 284 (Ripple, J., dissenting); *Strong v. Omaha Constr. Indus. Pension Plan*, 701 N.W.2d 320, 331 (Neb. 2005) (Connolly, J., dissenting); *Keen v. Weaver*, 121 S.W.3d 721, 728 (Tex.) (Hecht, J., dissenting), *cert. denied*, 540 U.S. 1047 (2003); Norwood, *supra*, at 72-102.

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[3] As a practical matter, a QDRO submitted to and approved by the plan is a plan document. *See McGowan v. NJR Serv. Corp.*, 423 F.3d 241, 246 (3d Cir. 2005) (opinion of Van Antwerpen, J.), *cert. denied*, 127 S. Ct. 1118 (2007); *Fox Valley*, 897 F.2d at 283 (Easterbrook, J., dissenting); *Silber v. Silber*, 786 N.E.2d 1263, 1267 (N.Y.), *cert. denied*, 540 U.S. 817 (2003); U.S. Am. Br. 25. But regardless of whether a QDRO is a plan document, payment of benefits in accordance with a QDRO is mandated by the plan documents and thus complies with the "plan documents" requirement.

Admittedly, a majority of courts have held that a plan must give effect to a waiver of benefits in a non-qualified divorce decree under federal common law rather than to the participant's beneficiary designation made in accordance with the plan documents. *See* Pet. Br. 31-32 (collecting cases). These decisions, however, do not withstand scrutiny.

> [N]ot one of the courts in the majority has explained why the statutory analysis used by these courts adopting the plan-documents rule is flawed. . . . Because the waiver rule is based, at best, on throwaway, conclusory statements rather than a careful analysis of statutory language, . . . the fact that a majority of cases have adopted it is entitled to little weight.

Strong, 701 N.W.2d at 331 (Connolly, J., dissenting).

Courts holding that plans must give effect to a purported waiver that is contrary to the terms of the plan documents have reasoned that (1) ERISA's QDRO provisions already require administrators to go beyond plan documents in determining benefits, and (2) requiring administrators to recognize non-qualified divorce decrees imposes no greater burden than the QDRO provisions already impose. Both parts of this analysis are badly mistaken.

First, as explained above, payment of benefits under a QDRO is consistent with the "plan documents" requirement. *See* pages 6-8, *supra*. When benefits are paid pursuant to a QDRO, the administrator is following, not violating or going beyond, the plan's terms.

These courts also are wrong in concluding that non-qualified orders are no more burdensome than qualified orders for plan administrators to follow. It is vastly easier to interpret and implement orders that are submitted to the administrator for review under the plan's procedures to determine whether they satisfy ERISA's objective QDRO requirements than it is to handle orders that are not subject to a uniform legal standard, vary widely in content and form, and might not be submitted until after benefits have been paid to the designated beneficiary. Indeed, as explained above, a principal objective of the QDRO provisions is to *minimize* the burdens on plans. *See* pages 7-8, *supra*; *McGowan*, 423 F.3d at 247; U.S. Am. Br. 28. Furthermore, Congress itself, in enacting the QDRO provisions, recognized the enormous differences between qualified and non-qualified orders and purposely required plans to give effect only to QDROs precisely to avoid the immeasurably greater burdens that non-qualified orders would impose on plans. *See* page 7, *supra*; Resp. Br. 30-32; *Altobelli*, 77 F.3d at 83 (Wilkinson, C.J., dissenting) ("Congress was concerned with the very problems that face us here when it defined the requirements to establish a QDRO, and it took pains to ensure that enforcement of QDROs would not produce inefficiency and uncertainty").

Moreover, the common-law approach urged by petitioner is highly fact intensive and subjective and thus unworkable in practice. Unlike the simple procedure Congress contemplated, it would require a time-consuming, costly, and speculative process of interpreting non-qualified decrees. Congress never intended to require plan administrators to resolve

factual questions such as the voluntariness and good faith of the divorcing parties' agreement to a purported waiver, the particular circumstances of their divorce, and the ex-spouses' post-divorce relationship. Accordingly, petitioner's common-law approach would not lead to readily determinable and consistent results. The existing case law demonstrates these problems.

First, as the United States discusses, the common-law approach would require plan administrators "to decide among the 'myriad of tests' courts have developed to determine whether language in a domestic relations order is sufficient to constitute a valid waiver." U.S. Am. Br. 27 (citation omitted). For example, in the Fifth Circuit, the standard is whether "the waiver is explicit, voluntary, and made in good faith." *Manning v. Hayes*, 212 F.3d 866, 874 (5th Cir. 2000), *cert. denied*, 532 U.S. 941 (2001). On its face, that standard requires intensely factual and subjective inquiries. This case well illustrates the difficulty. Here, the divorce decree uses the term "divested"; nowhere does the word "waived" appear even though waiver is the linchpin of petitioner's argument. It would be extraordinarily burdensome and ultimately impossible for a plan administrator reliably to determine whether the divorcing parties' choice of this language has any significance.

Similarly, as the government explains, the common-law approach leads to unpredictable and "inconsistent interpretations" (U.S. Am. Br. 28) with "substantially similar language being treated differently" (*id.* at 27 n.9). In this case, for instance, the Kennedys' divorce decree does not specifically refer to Liv's right to SIP death benefits and did not preclude William from

maintaining Liv as his beneficiary after the divorce. *See also* page 17, *infra*. Although the district court concluded that Liv nonetheless waived those benefits (*see* Pet. App. 31-52), the Eighth Circuit has held that indistinguishable language in a divorce decree did not waive death benefits under federal common law. *See Lyman Lumber Co. v. Hill*, 877 F.2d 692, 693-94 (8th Cir. 1989). There, the decree provided that the ex-husband "shall have as his own, free and clear of any interest of [his ex-wife], the interest in the profit-sharing plan." The court ruled that the decree did not waive the ex-wife's right to death benefits because it did not "specifically refer to and modify the beneficiary interest." Such inconsistencies are inevitable under petitioner's common-law approach.

The fact-intensive and unpredictable nature of the common-law approach is further illustrated by the Eighth Circuit's decisions in *Mohamed v. Kerr*, 53 F.3d 911 (8th Cir.), *cert. denied*, 516 U.S. 868 (1995), and *National Auto. Dealers and Assocs. Retirement Trust v. Arbeitman*, 89 F.3d 496 (8th Cir. 1996). Although the language in the two decrees was substantially similar (*see* 89 F.3d at 501), the court came to opposite results based on the facts of each case.

In *Mohamed*, the ex-husband was seriously ill, and the ex-wife "could not get away fast enough, and she never looked back . . . [and] abandoned him to his illness." 53 F.3d at 916. Furthermore, "[o]nce the divorce was final all ties between [the ex-spouses] were severed." *Id*. Based on "the facts surrounding the Kerrs' divorce" and their post-divorce relationship (*id.*), the Eighth Circuit reached the "fact-driven determination"

(*id.* at 915) that the divorce decree waived death benefits under federal common law.

By contrast, in *National Auto. Dealers*, the Eighth Circuit concluded that similar language did not constitute a waiver. There, the ex-spouses "'maintained an amicable relationship'" and the ex-husband "provided more support to [the ex-wife] . . . than he was legally obligated to provide." 89 F.3d at 501. Based on those facts, the court distinguished *Mohamed* as involving "a vastly different situation" *Id.*

These divergent results, and the underlying fact-intensive and subjective common-law inquiries, are irreconcilable with ERISA's fundamental design to have a simple, efficient, and administrable benefits system. In enacting the "plan documents" requirement, Congress intended that benefit decisions would be made pursuant to a bright-line and objective standard that could be easily and consistently applied by plan administrators.

Accordingly, ERISA forecloses the analysis of those courts that have followed federal common law rather than the plan documents. ERISA's "clear statutory command, together with the plan provisions, answer the question; the documents control, and those name [the ex-wife]." *McMillan v. Parrott*, 913 F.2d 310, 311-12 (6th Cir. 1990). *See also Altobelli*, 77 F.3d at 82 (Wilkinson, C.J., dissenting). As then-Chief Judge Wilkinson observed, "[w]hat seem like small equitable steps in a particular case may lead to large administrative headaches in the aggregate." *Id.* at 84.

III. UNDER ERISA'S "PLAN DOCUMENTS" REQUIREMENT, THE PLAN COULD NOT GIVE EFFECT TO LIV'S PURPORTED WAIVER IN THE DIVORCE DECREE AND HAD TO PAY WILLIAM'S ACCOUNT BALANCE TO LIV AS WILLIAM'S DESIGNATED BENEFICIARY.

A. The Plan Documents Made Liv The Designated Beneficiary And Required The Plan To Pay Her.

Under the terms of the SIP, the Plan could not follow Liv's purported waiver in the non-qualified divorce decree. Instead, it was required to pay William's account balance to Liv as William's designated beneficiary.

The SIP documents are clear and not disputed by petitioner. The SIP entitled each participant to "designate any beneficiary or beneficiaries he chooses to receive all or part of his interests . . . in case of his death." J.A. 48. The SIP also allowed him to "replace or revoke such designation." *Id.* Any designation, replacement, or revocation had to be made in the manner prescribed by the Plan (*id.* at 52), which supplied forms for such purposes (*id.* at 34, 56-57). Furthermore, the Plan stated that "distribution shall be made to . . . the executor . . . of the decedent's estate" only "*[i]f* no surviving spouse exists and *no beneficiary designation is in effect*." *Id.* at 48 (emphasis added).[4]

[4] Petitioner suggests that William's designation of Liv was not "in effect" because of the purported waiver in the divorce decree. *See* Transcript of Oral Argument 10-11 (Oct. 7, 2008) ("Tr."). That is a circular word game. The "plan documents" requirement serves precisely to avoid the burdens and uncertainties that would occur if administrators had to look beyond plan documents to determine whether non-plan documents indicate a different beneficiary.

Moreover, the SIP provided a mechanism for Liv to disclaim her right to benefits by filing a qualified disclaimer under 26 U.S.C. § 2518. *See* J.A. 50. However, as previously explained, and as petitioner does not contest, the purported waiver in the Kennedys' divorce decree is not a qualified disclaimer because it involved consideration. *See* Resp. Br. 21-23.

The Summary Plan Description also set forth the rules for paying benefits upon the participant's death. The SPD stated that death benefits would be paid to the designated beneficiary: "If you die before receiving your SIP account balances, your beneficiary(ies) will receive the balance in your accounts." J.A. 43. *See also* SPD, p. 22 (D.I. 40, Ex. C, D0027) ("[g]enerally, plan benefits may be paid only . . . to your beneficiaries or survivors"). The SPD further explained that "an exception to this may be made as a result of a qualified domestic relations order." *Id*. It therefore was clear that death benefits would be paid to the designated beneficiary unless a QDRO provided otherwise.

Thus, following the divorce, William was the "master of his own ERISA plan." *McMillan*, 913 F.2d at 312. And, although William lived for seven years after the divorce, he never changed his SIP beneficiary designation. He did, however, make a post-divorce change in his beneficiary designation under the separate Pension and Retirement Plan and hence was aware of his right to make such a change and the simple process for doing so. *See* Resp. Br. 9; page 16, *infra*.

Accordingly, the applicable plan documents obligated the SIP to pay William's account balance to Liv as his designated beneficiary. *See McMillan*, 913 F.2d at 312 ("it was [the participant's] designation which controls, not [his ex-wife's] intent").

B. Petitioner's Remaining Arguments Are Without Merit.

1. Petitioner asserts that the form William submitted to designate Kari as his beneficiary for the Pension and Retirement Plan also made her his beneficiary under the SIP. *See* Pet. Reply Br. 16-17; Tr. 7-8. In both its title and its body, however, this form plainly stated that it applied to "the Pension and Retirement Plan" (J.A. 62) – not the SIP. What is more, petitioner *stipulated* in the district court that William "never executed any forms or documents to remove or replace Liv Kennedy as his sole beneficiary under . . . the SIP." J.A. 28. *See also* Pet. App. 3 (William "never executed any documents replacing or removing Liv Kennedy as the SIP beneficiary"). Moreover, under this argument, Kari would be the beneficiary and thus was required to file suit in her individual capacity rather than as executrix of William's estate. Petitioner's eleventh-hour about-face is both procedurally and substantively unavailing.

2. Petitioner also argues that William and Liv intended in their 1994 divorce that Liv would not receive the death benefits under the Plan. *See* Tr. 8. This is both irrelevant and unsubstantiated.

It is irrelevant because the identity of the beneficiary cannot turn on the intentions of the divorcing parties. *See* Resp. Br. 38-39. As explained above, a fact-intensive inquiry into the divorcing parties' state of mind would be incompatible with the simple, efficient, and easily administrable process Congress intended. *See* pages 3-6, *supra*.

It is unsubstantiated because it cannot now be known what William and Liv intended in their divorce. The divorce decree itself does not answer that question. It left the decision to William, but nothing prevented him from maintaining Liv as his beneficiary following the divorce. In fact, there are a number of cases where that occurred. *See* Resp. Br. 38 & n.11.

All that can be said with any certainty is that William's thoughts subsequent to the divorce cannot now be known and that there are several possible explanations for not changing the designated SIP beneficiary, including the possibility that he wanted Liv to receive the benefits upon his death. That Liv had no right to them following the divorce did not in any way prohibit William from maintaining her as the beneficiary or reveal anything about his post-divorce intentions. Beneficiaries would not be able to determine their rights, and plans would not be administrable, if benefits turned on such a speculative will-o'-the wisp.

3. Finally, petitioner asserts that the beneficiary designation form is not a plan document. *See* Pet. Reply Br. 23; Tr. 20. Once again, that is irrelevant.

It is clear – and petitioner has never argued otherwise – that the SIP is a plan document and provides that benefits be paid to the beneficiary properly designated in accordance with the terms of the Plan. Thus, whether or not the form itself is a plan document, the Plan requires that payment be made to the designated beneficiary, and payment to anyone else would violate the "plan documents" requirement. *See* Tr. 26.[5]

Petitioner further argues that the Summary Plan Description (mistakenly referred to as the SIP) defined the plan documents and did not include beneficiary designation forms. *See* Pet. Reply Br. 25; Tr. 56. Nothing in the SPD, however, changed the plan requirement that benefits be paid to the designated beneficiary. Moreover, the SPD did precisely what it was supposed to do: it fairly described itself as a "reasonably thorough" and "non-technical" explanation, and it referred participants to the official plan texts of the SIP and the trustee agreement as "the governing documents in the event questions arise." SPD, p. 24 (D.I. 40, Ex. C., D0029).[6]

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[5] Contrary to petitioner's argument (*see* Pet. Reply Br. 23), just as a QDRO is effectively a plan document, the beneficiary designation form also should be considered a plan document for purposes of the payment of benefits. *See* page 8 note 3, *supra*. The plan makes this the controlling document for benefit payments, and it is submitted to and maintained by the plan for that purpose. *See* Norwood, *supra*, at 74-77.

[6] Petitioner also asserts (Pet. Reply Br. 24-25; Tr. 21) that a ruling for respondents would require that beneficiary designation forms be disclosed to all participants under § 1024(b)(4). That issue has not been adequately briefed and is outside the scope of this case. For present purposes, it is sufficient to note that courts have recognized limits under § 1024(b)(4) (*see*, *e.g.*, *Board of Trustees of the CWA/ITU Negotiated Pension Plan v. Weinstein*, 107 F.3d 139

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CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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November 10, 2008

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(2d Cir. 1997)) and that petitioner's construction of the statute to require that each participant's designation form be disclosed to all participants is nonsensical.