

WHO GETS IT?

By: James G. Keenan, Esquire

The Law Office of Hoffmeyer and Semmelman, LLP, and James G. Keenan, Esquire, represent the ex-spouse of the deceased, Paul Sauers. The case is currently pending after re-argument before the Pennsylvania Superior Court on the issue of whether the ex-spouse should receive the insurance proceeds from the decedent's life insurance policy. The reason this issue is disputed is because there are conflicting bodies of law which are federal regulations and state regulations governing such matters.

The underlying case of **In Re: Sauers** was brought before the Orphans' Court of York County, Pennsylvania by the estate of behalf of a secondary beneficiary on a life insurance policy. The estate is claiming that the policy proceeds should be paid upon the death of Mr. Sauers to the alternate payee because the initial beneficiary, the now ex-spouse of the decedent, was not entitled to receive those benefits under the Probate Estate and Fiduciary Code of the Commonwealth of Pennsylvania. One should note that the beneficiary designation set forth on the life insurance policy by Mr. Sauers was never changed to remove his ex-spouse as the primary beneficiary on that life insurance policy. Mr. Sauers did make other adjustments to the beneficiary designations after the divorce process had been started and re-designated various beneficiaries which removed his now ex-wife as beneficiary under his various other assets and benefits.

It is the ex-wife's position that if her name was still listed as a primary beneficiary to receive the proceeds from the life insurance policy which was part of an employer sponsored benefits program qualified under the federal regulations referred to as ERISA, then she is entitled to receive those benefits in spite of what the state law sets forth. Essentially, the ex-wife's argument is that because the life insurance policy was part of an employer benefit program available to Mr. Sauers and which remained available until his death and that program was "qualified" under the federal body of law referred to as ERISA then that would pre-empt any state limitations on who should receive from the policy or how the policy proceeds should be distributed. Clearly, the body of law referred to as ERISA provides for the designated beneficiary to receive those life insurance proceeds regardless of any consideration of any state law and whether the entry of a Divorce Decree would be viewed as removing the ex-spouse as beneficiary when the decedent failed to take any action to remove the now ex-spouse as beneficiary from life insurance benefits which are a part of any qualified employer sponsored benefit plan.

The reason the body of law under ERISA should pre-empt the state law is because of the supremacy clause of the United States Constitution. In other words, states cannot regulate matters which are governed by federal law if those state regulations would conflict with the application of federal law. In the instant case, the state regulation under the PEF code states in part that the life insurance policy which continues to designate a spouse, who is later an ex-spouse, as a primary beneficiary would be ignored and therefore the secondary beneficiary should receive the proceeds. Clearly, this conflicts with the provisions under the federal regulations. However, the statute in Pennsylvania also has a type of "remedy clause" at the end of the relevant portion of the PEF code which states that even if the insurance carrier pays the

proceeds from a life insurance policy qualified under ERISA to the primary beneficiary, the alternate beneficiary can bring suit to claim those benefits from the designated beneficiary.

It is the ex-wife's position that Husband knew what he was doing by allowing Wife's name to remain on the life insurance benefits even though he changed the other beneficiary designations on other benefits through his employer and elsewhere. In addition, the remedy clause set forth in the state statute cannot survive by itself unless the two prior phases which state how proceeds should be distributed would not be pre-empted by federal law. A remedy clause cannot "stand alone" in a statute when there is not an underlying basis which must be complied with somehow in order to invoke the remedy clause. Here the underlying basis was eradicated by federal law and thus pre-empted.

The Petitioner (ex-wife) to the Pennsylvania Superior Court believes this is a matter of first impression for the Pennsylvania courts to address. The case is currently pending a decision after the respondent, the Estate of Paul Sauers, requested re-argument which was held earlier this fall of 2008. The Superior Court reviewed the initial appeal and entered a majority opinion in favor of the ex-spouse granting her the receipt of the proceeds. The disposition of the case is still on hold due to the request for re-argument by the estate.

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