
By Wesley Stockard and Susan Hoffman

Recently, in *Hillman v. Maretta*, the Supreme Court of the United States affirmed a Virginia Supreme Court ruling that held that federal law preempts a state law that allowed a deceased federal employee’s spouse to sue a former spouse for proceeds paid to her as a beneficiary under the Federal Employees’ Group Life Insurance Act (FEGLIA). Although the decision was based on the specific provisions of FEGLIA, the principles expressed in the decision may apply to similar insurance or plan proceed disputes arising under the Employee Retirement Income Security Act (ERISA).

Section 20-111.1 of the Virginia Code allows an insurance policyholder’s widow or widower to sue a former spouse to recover death benefits the former spouse received under an insurance policy or death benefit plan. The purpose of the statute is to address a situation in which a policyholder neglects to change his or her beneficiary designation after a change in marital status, presuming that the policyholder would want the death benefits to be paid to his or her current spouse. Noting several other states have similar statutes and that federal courts have split on the issue of whether such statutes were preempted by FEGLIA, the Supreme Court granted *certiorari* to resolve the dispute.

Applying traditional conflict preemption principles, the Supreme Court held the Virginia statute was preempted by federal law because one of the purposes of FEGLIA is to ensure that a named beneficiary receives and keeps control of insurance proceeds under the life insurance program for federal employees. Section 20-111.1 of the Virginia Code directly conflicts with that purpose, the Court explained, by providing that a widow or widower can sue a former spouse to collect the proceeds of the policy despite the designation of the former spouse as the named FEGLIA beneficiary. Importantly, over the objection of Justice Thomas—who concurred in the result but not the opinion—the majority opinion looked to “the nature of the federal interest” at issue to determine whether the Virginia statute was preempted by FEGLIA. In contrast, Justice Thomas wrote in his concurring opinion that the Court should simply interpret the textual meaning of FEGLIA’s terms, as opposed to “engag[ing] in freewheeling inquiry into whether state law undermines supposed federal purposes and objectives.”

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1 No. 11-1221, 599 U.S. ___ (2013).
While the holding in Hillman concerns only the preemptive effect of FEGLIA, which applies to employees of the federal government, the decision is still an important one for employers. First, the opinion reaffirms the principle that where Congress, through the enactment of federal legislation, has articulated a position regarding how employee benefits are to be administered, federal law preempts state laws that conflict with that position. This principle is often used by employers that maintain employee benefit plans governed by ERISA to insulate themselves from attacks on their benefit plans (and determinations made under those plans) based on conflicting or cumbersome state laws. Further, the Hillman decision articulates that the preemption determination should be made with an eye towards the “the nature of the federal interest” set forth through the statute, not just the statutory text itself. Thus, the Hillman decision bolsters arguments that state statutes and causes of action that touch on “the federal interest” undergirding ERISA are preempted by federal law, even if the terms of ERISA itself do not speak directly to issues addressed by the state law.

Finally, the Hillman decision arguably sheds light on the answer to an important question previously left open by the Supreme Court in Kennedy v. Plan Administrator for DuPont Savings and Investment Plan, 555 U.S. 285 (2009). In Kennedy, the Court held that an ex-wife who waived her right to a participant’s 401(k) account balance as part of a divorce settlement was still entitled to the account balance if the participant died without changing his beneficiary designation, which still specified the ex-wife as his beneficiary. The Court reasoned that the plan administrator is required to distribute the account balance pursuant to the terms of the plan, and the plan at issue in Kennedy expressly provided that plan proceeds were to be distributed in accordance with the last valid beneficiary designation.

In a footnote, however, the Kennedy decision left open “the question of whether the Estate could have brought an action in state or federal court against [the former spouse] to obtain the benefits after they were distributed,” citing to prior federal district court opinions finding that ERISA did not preempt lawsuits brought under state law seeking to recover plan funds once they were distributed and “were no longer entitled to ERISA protection….?”

The Hillman decision suggests that ERISA may indeed preempt such state law causes of action to the extent they would result in redirection of the distributed funds to a beneficiary other than the one designated by the plan. More specifically, it is arguable that ERISA, like FEGLIA, embodies a “federal interest” not only in seeing that plan benefits are distributed to a named beneficiary in accordance with the terms of the plan, but also that those benefits remain in the control of the beneficiary after being distributed. If so, under the reasoning in Hillman, allowing those proceeds to be stripped from the named beneficiary in a subsequent lawsuit brought under state law would conflict with or offend this “federal interest.” Notably, federal courts, including the U.S. Courts of Appeal for the Third and Fourth Circuits have held otherwise, finding that once the plan administrator distributes the account balance as required by the plan documents, the beneficiary’s right to these funds can be challenged in an ordinary contract action based on a common law waiver contained in a divorce decree or other settlement.

While the Hillman decision suggests that ERISA may preempt state law causes of action which would result in redirection of funds distributed by employee benefit plans to a beneficiary other than the one designated by the terms of the plan, employers who sponsor ERISA plans should keep in mind that through careful design of the plan itself the employer can control these types of situations and reduce the risk that plan participants will be subject to these types of state law battles. For example, an employer could include a provision in the plan stating that spousal beneficiary designations automatically become invalid upon divorce, thereby avoiding the situation where a former spouse receives a distribution from the plan as a result of a stale beneficiary designation that a participant inadvertently did not change. Additionally, employers should keep in mind that in their benefit plans’ summary plan description, it is a good idea to remind plan participants that they should consider updating their plan beneficiary designations at certain key points, including at the time of a marriage, birth of a child, or a divorce.

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2 555 U.S. at 568 n.10.
3 Estate of Kensing v. URL Pharma Inc., 674 F.3d 131 (3d Cir. 2012).