No. 17-3120

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SUN LIFE INSURANCE COMPANY OF CANADA,
Plaintiff-Appellant,

v.

SIERRA JACKSON,
Defendant-Appellee.

On Appeal from the United States District Court
for the Southern District of Ohio

BRIEF OF THE SECRETARY OF LABOR AS AMICUS CURIAE IN SUPPORT OF DEFENDANT-APPELLEE FOR AFFIRMANCE

NICOLAS C. GEALE
Acting Solicitor of Labor

THOMAS TSO
Counsel for Appellate
and Special Litigation

G. WILLIAM SCOTT
Associate Solicitor
for Plan Benefits Security

STEPHANIE LEWIS
Senior Attorney
Plan Benefits Security Division
Office of the Solicitor
U.S. Department of Labor
200 Constitution Ave., N.W., N-4611
Washington, D.C. 20210
(202) 693-5588

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QUESTIONS PRESENTED

1. Whether a domestic relations order is a qualified domestic relations order (QDRO) if the order is in substantial compliance with the requirements in ERISA section 206(d)(3)(C), 29 U.S.C. § 1056(d)(3)(C).

2. Whether the divorce decree in this case is a QDRO even though the parties to the decree allegedly failed to perform certain obligations that may be required by the state court decree but are not required under ERISA.

STATEMENT OF INTEREST

The Secretary of Labor has primary authority to interpret and enforce Title I of ERISA, including its QDRO provisions, to ensure fair plan administration and compliance with ERISA's requirements. See 29 U.S.C. §§ 1132, 1134, 1135. Under ERISA section 206(d)(3), 29 U.S.C. § 1056(d)(3), a state-issued domestic relations order must meet certain requirements to be a QDRO. If it is a QDRO, the plan administrator must distribute all or a portion of a participant's plan benefits to a spouse, former spouse, child or other dependent of the participant (an "alternate payee") as mandated in the QDRO regardless of the participant's beneficiary designation. The Secretary has a substantial interest in ensuring that plan administrators adhere to their fiduciary responsibilities set forth in ERISA section 404(a), 29 U.S.C. § 1104(a), in determining whether a domestic relations order is a QDRO and distributing the benefits accordingly, 29 U.S.C. § 1056(d)(3)(I).

In this case, the district court held, in accord with the statutory text, this Court's precedents, the legislative history, and the Department of Labor's established view, that "substantial compliance" with the statutory QDRO requirements is sufficient and that the order here substantially complied. However, the Second Circuit's decision in Yale-New Haven v. Nicholls, 788 F.3d 79, 85 n.3 (2d Cir. 2015), cited by Sun Life requires literal compliance and mistakenly reads this Court's decisions as consistent with Nicholls' literal approach. The Secretary has a significant interest in establishing that a domestic relations order that is in substantial compliance with the statutory requirements is a QDRO and in rejecting the Second Circuit's reading of this Court's precedents.

In this case, the district court also correctly rejected Sun Life's argument that a QDRO loses its validity if it is not presented to the ERISA plan before the plan participant's death, or if the parties to the decree violate the state decree's own monitoring or enforcement mechanisms. An approach that permits plan administrators to consider non-ERISA requirements to find that orders do not qualify as QDROs would be contrary to existing law and undermine the uniformity of ERISA's requirements.

STATEMENT OF THE CASE

A. Factual Background[1]

From about November 1993 until his death in February 2013, Bruce Jackson participated in his employer's life insurance plan which provided $48,000 in basic life insurance and $191,000 in supplemental life insurance. Sun Life Assurance Co. of Canada v. Jackson, No. 3:14CV41, --- F.Supp.2d ---, 2016 WL 4184444, at *1 (S.D. Ohio Aug. 5, 2016) ("Sun Life"). Throughout this period, his uncle, Richard Jackson, was Bruce's designated beneficiary. Id. at *1-2. Bruce was married to Bridget Jackson until January 2006. Id.

In January 2006, Bruce and Bridget Jackson obtained a divorce decree, incorporating their separation agreement, which required that they both "maintain, unencumbered, all employer-provided life insurance, now in existence at a reasonable cost, or later acquired at a reasonable cost, naming their minor child as primary beneficiary during her minority, and the obligation to do so shall continue until she (a) reaches the age of eighteen (18) or graduates from high school, whichever occurs last." Sun Life, 2016 WL 4184444, at *2. Bruce and Bridget had only one child, Sierra, born February 1995, who was a high school student at the time of Bruce's death. Id. at *1-2. The divorce decree also required Bruce and Bridget to monitor their beneficiary designations for benefits covered by the order

[1] The Factual Background is based on the district court's August 5, 2016 decision.

and contact insurers about changing any beneficiary designations to Sierra. Id. at *8. Notwithstanding the divorce decree, Bruce Jackson died without ever having changed his beneficiary designation to his daughter. Id.

In July 2013, Sierra Jackson's attorney sought benefits on her behalf under the life insurance policy from Bruce's employer, who forwarded the request to Sun Life. Sun Life, 2016 WL 4184444, at *2. Richard Jackson filed a competing claim. Id. In August 2013, Sierra's attorney informed Sun Life that his client was the lawful beneficiary pursuant to a divorce decree, which he attached. Id. Nonetheless, Sun Life paid the proceeds to Richard Jackson. Id. Sierra's attorney expressed his client's objection and requested information about appealing the decision. Id. at *3.

B. Proceeding Below

Sun Life brought suit seeking a declaratory judgment that it properly paid the proceeds to Richard Jackson. Sierra Jackson filed a cross-motion. Sun Life, 2016 WL 4184444, at *1. The district court issued a decision in Sierra's favor. It held that "as a matter of law, the [divorce decree] substantially complied with 29 U.S.C. § 1056(d)(3)(C), [and] is a QDRO[.]" Id. at *7.

The district court noted that, as a threshold matter, the domestic relations order must specify the elements required under 29 U.S.C. § 1056(d)(3)(C) to be a QDRO. Sun Life, 2016 WL 4184444, at *5. That provision requires that the order

clearly specif[y]--

(i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(iii) the number of payments or period to which such order applies, and

(iv) each plan to which such order applies.

29 U.S.C. § 1056(d)(3)(C).

The district court found that the order substantially complied with clause (i) because the decree listed Bruce Jackson's name and mailing address, the decree referred to "their minor child" as the primary beneficiary, and Sierra Jackson was their only child. Sun Life, 2016 WL 4184444, at *5. The court further concluded that while the decree did not list Sierra Jackson's address, the addresses of both of her parents, who shared custody, were sufficient. Id. at *5-*6 (citing Metro. Life Ins. Co. v. Marsh, 119 F.3d 415, 422 (6th Cir. 1997)).

The court also found that the decree was in substantial compliance with clause (ii) which requires the order to clearly specify the amount or percentage of the benefits to be paid to the alternate payee. Sun Life, 2016 WL 4184444, at *6. Because Sierra was the only child, it was clear that she would receive 100 percent of the proceeds. Id. The court held that clause (iii) was satisfied because the

decree "specifies the period to which Article IX [of the order] applied: 'until the later of Sierra's eighteenth birthday or her graduation from high school, whichever is later.'" Id.

The court disagreed with Sun Life's argument that the decree failed to satisfy clause (iv) because the decree did not specifically name Bruce's life insurance policy.[2] Instead, the decree required each parent "to designate Sierra as the beneficiary of 'all employer-provided life insurance, now in existence at a reasonable cost, or later acquired at a reasonable cost.'" Sun Life, 2016 WL 4184444, at *6 (emphasis added). The court noted that the Sixth Circuit does not require the decree to provide a specific policy name as long as the order "permit[s] identification of the plan and is not ambiguous." Id. (citing Marsh, 119 F.3d at 422). The court also rejected Sun Life's arguments that Bruce and Bridget Jackson's failure to comply with the decree's requirements to monitor and report changes in beneficiaries disqualifies the decree as a QDRO. Id. at *7-*9. The court reasoned that any requirements to become a QDRO are derived solely from

[2] The Department does not address the preliminary question whether the QDRO provisions, which were adopted as an exception to ERISA's prohibition on the alienation or assignment of pension benefits and as an exception to preemption with respect to ERISA plans, are also applicable to life insurance or other welfare benefits, because the parties here do not dispute that under this Court's precedent, Marsh, 119 F.3d at 421, the QDRO requirements are applicable here and the Department is not a party to this case.

ERISA not state law. Id. at *8. Consequently, the court concluded that each of the required elements was clearly specified. Id. at *6.

SUMMARY OF ARGUMENT

As the district court correctly decided, a divorce decree can be qualified as a QDRO if it is in substantial compliance with the statutory requirements to "clearly specify" certain essential information about the parties to the decree and the allocation of benefits. The plain text, ERISA's design, its object and policy, its legislative history, and the Department of Labor's views all support a "substantial compliance" standard for the QDRO requirements. Importantly, Congress imposed fiduciary duties on the determination process, which requires a determination that is both diligent and prudent. A "substantial compliance" standard rejects a "magic words" approach, and instead requires the plan fiduciary to understand the order's context when determining whether the statutorily required information is clearly conveyed. Otherwise, a mere technicality would defeat a state court order. The daughter of the plan participant in this case presented the plan fiduciary with a valid state court order, with enough identifying information to unambiguously and objectively determine the state court's intent to allocate to the daughter the proceeds from the participant's life insurance policy and to convey all of the information required by the statute. In these circumstances, the order was in "substantial compliance" with the statutory requirements.

Further, any application of state requirements beyond those requirements found in ERISA to disqualify an order as a QDRO is contrary to established Supreme Court precedent and undermines ERISA's goals of uniformity

ARGUMENT

I. A Domestic Relations Order is a QDRO if it is in "Substantial Compliance" with 29 U.S.C. § 1056(d)(3)(C)'s Requirements

A. The Purpose of the QDRO Provisions in the Retirement Equity Act Supports a "Substantial Compliance" Approach

In 1984, Congress enacted the Retirement Equity Act of 1984 (REA), Pub. L. 98-397, 98 Stat. 1426, in part to ensure ERISA plans honored the intent of state domestic decrees when allocating employee benefits. Boggs v. Boggs, 520 US 833, 846-847 (1997). At the time, Congress noted that "[w]hen benefits are granted in divorce situations, [benefits are] vulnerable because the former spouse's benefit is tied to the benefit of the participant [and] nonparticipant spouses have had difficulty receiving a share . . . because their ability to receive payments often is dependent upon the actions of the participant." H.R. Rep. No. 98-655 (pt. 1), at 31 (1984). Before REA, the courts were conflicted about whether ERISA's broad preemption provision, ERISA Section 514, 29 U.S.C. § 1144, preempted state domestic relations orders which allocated some or all of a plan participant's benefits to persons not designated by the participant as beneficiaries in plan

documents.[3] Consequently, plan fiduciaries could be legally vulnerable whether they complied with a state order dividing and distributing some or all of a participant's benefit to such persons or ignored the order and distributed the benefits to the beneficiary designated by the participant.

In response to this dilemma, REA amended ERISA to except from ERISA preemption domestic relations orders that meet the definition of "qualified domestic relations orders," 29 U.S.C § 1056(d)(3)(B)(i). See S. Rep. No. 575, 98th Cong. 2d Sess. 19 (1984); DOL Advisory Opinion 2004-02A, 1990 WL 252962, at *2-*3 (Dec. 4, 1990); 29 U.S.C. § 1144(b)(7). "Domestic relations orders" are judgments, decrees, or orders issued under state domestic relations laws which address child or family support, alimony payments, or marital property rights. 29 U.S.C. §1056(d)(3)(B)(ii). A QDRO allocates to an "alternate payee" all or a portion of a participant's plan benefits regardless of whom the participant otherwise designated in plan documents to receive benefits upon his or her retirement or death. 29 U.S.C. § 1056(d)(3)(B)(i), (J), (K).

REA thus honors the instructions of the state authority that determined the disposition of property upon the dissolution of a marriage. "[O]ne of REA's central

[3] ERISA section 514(a) provides, with certain exceptions, that Title I of ERISA preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a).

purposes . . . is to give enhanced protection to the spouse and dependent children in the event of divorce or separation." Boggs, 520 U.S. at 847. In light of REA's purposes, a strict reading of REA's text "has the potential to frustrate [an] important Congressional purpose by making it unreasonably difficult for domestic relations orders to qualify as QDROs." Hawkins v. Comm'r of Internal Revenue, 86 F.3d 982, 991 (10th Cir. 1996). As fully explained below, rejecting QDROs based on technical noncompliance undermines REA's intended protections.

B. Consistent with REA, this Court's Interpretation of ERISA Section 206(d)(3) Supports a "Substantial Compliance" Standard

Consistent with REA's purposes, this Court set forth a "substantial compliance" standard in Marsh, noting, "we should not demand literal compliance where Congress' intent has been to give effect to domestic relations orders where it is clear what the decree intended." 119 F.3d at 422. A substantial compliance test includes an examination of the substance of the document, and under Marsh, an order qualifies if the order as a whole provides the "essential information" required by ERISA in a "clear" and "unambiguous" manner. Id.

Marsh provides two pertinent examples. First, this Court found that an order substantially complied with the requirement to "specify 'the number of payments or periods for which such order applies'" in 29 U.S.C. § 1056(d)(3)(C)(iii):

"[Because] [t]his was a life insurance policy to be paid in a lump sum on decedent's death and not payments from a pension plan, there was no need to

specify the number of payments or periods for which the order applies." Marsh, 119 F.3d at 422. Second, "[w]hile the divorce decree did not specify where deceased was employed, the decree identified the policy as one through Metropolitan Life Insurance Company maintained at his place of employment. This permitted identification of the plan and is not ambiguous," thereby complying with 29 U.S.C. § 1056(d)(3)(C)(iv). Id.

Though Marsh applied the substantial compliance test to determine whether a pre-REA domestic relations order complied with the QDRO requirements, which did not exist when the order was entered, 119 F.3d at 422, this Court continued to apply Marsh's substantial compliance standard for post-REA orders. See, e.g., Metro. Life Ins. v. Clark, 159 F. App'x 662, 665 (6th Cir. 2005) (unpublished) (applying Marsh to a "virtually identical" post-REA order); Mattingly v. Hoge, 260 F. App'x 776, 780 (6th Cir. 2008) (unpublished). For example, in Clark, 159 F. App'x at 664 n.1, the Court understood from the context and the order as a whole the number of children covered by the state order despite a "clerical mistake" in the state order, and affirmed the dismissal of a stepson's claim.

Recently, the Second Circuit read the Marsh decision narrowly to only apply to pre-REA orders. Nicholls, 788 F.3d at 84-85. Following Marsh, the Second Circuit previously concluded that a substantial compliance standard applied to pre-REA orders. Metro. Life Ins. Co. v. Bigelow, 283 F.3d 436, 444 (2d Cir. 2002)

(relying on Marsh). Unlike this Court's unpublished decisions in Clark and Hoge, however, the Second Circuit in Nicholls decided that this same standard should not apply to post-REA decrees, noting that Bigelow applied a substantial compliance standard for pre-REA orders because Congress completely exempted pre-REA orders from REA's requirements. Bigelow, 283 F.3d at 443 ("Congress made clear that a domestic relations order . . . entered before January 1, 1985 may be treated as a QDRO 'even if such order does not meet the [REA] requirements[.]'") (quoting Pub. L. No. 98–397 § 303(d)); Nicholls, 788 F.3d at 84. In contrast, the Nicholls court emphasized Congress's use of the phrase "clearly specifies" in REA as a basis to apply a stricter compliance standard to post-REA orders. 788 F.3d at 85. Sun Life relies on Nicholls to support its argument that ERISA requires strict or literal compliance for the post-REA order in this case despite Marsh. Plaintiff-Appellant Br. 13. This Court should confirm its prior unpublished decisions holding that Marsh's reasoning applies to both pre- and post-REA orders.

C. The Text, Context, and Legislative History Compel the Conclusion That a Decree is in Substantial Compliance When the Fiduciary Can Objectively Determine the State Court's Instructions with Respect to Each QDRO Requirement

Contrary to Nicholls, this Court's "substantial compliance" rule should continue to apply post-REA. A "substantial compliance" standard is dictated by the structure Congress intended for QDRO determinations, REA's legislative

history, other circuit case-law, and the Department's guidance, and is consistent with the statutory language.

The plain meaning of the term "clearly specifies" supports a substantial compliance standard. "Clear" is defined as "[f]ree from doubt; sure" or "[u]nambiguous." Black's Law Dictionary (10th ed. 2014) ("clear"); see also Merriam Webster Dictionary (defining "clearly" as "free from obscurity or ambiguity" or "easily understood"). "'[S]pecify' means 'to name or state explicitly or in detail.'" Kucana v. Holder, 558 U.S. 233, 243 n.10 (2010) (quoting Webster's New Collegiate Dictionary 1116 (1974)). In Mehanna v. U.S. Citizenship & Immigration Servs., 677 F.3d 312, 316 (6th Cir. 2012), this Court considered Congress's use of the term "specifies" in an immigration provision, which had insulated from judicial review only executive decisions that Congress clearly "specified" (quoting 8 U.S.C. § 1252(a)(2)(B)(ii)). The Court recognized that the "specifies" standard does not turn on the use of magic words but, instead, turns on the "substance" of the executive decision and how it relates to judicial review. Id. Consistent with these definitions, Marsh indicated that as long as the substance or the "essential information" required by ERISA can be determined without ambiguity, an order is in "substantial compliance" and, thus, must be qualified as a QDRO. 119 F.3d at 422. Conveying this substance unambiguously does not require the use of "magic words," or, in this context, certain requisite text, such as

the exact name of the benefits plan, see 29 U.S.C. § 1056(d)(3)(C)(iv). Cf. Perez v. Aetna Life Ins. Co., 150 F.3d 550, 555 (6th Cir. 1998) (applying this principle in construing a grant of discretion to ERISA plan administrators which must be "clear") (en banc). Instead, in discerning unambiguous language, this Court recognizes that context matters. Cf. id. at 557 (recognizing that the dissent's contrary reading was "implausible" given the structure of the plan).

In analogous areas of textual interpretation, whether a text is unambiguous is determined not only by the language itself but also by the specific context in which that language is used and the broader context of the entire text. Cf. Yates v. United States, 135 S. Ct. 1074, 1081-82 (2015) (statutory interpretation). Similarly, for contract interpretation, the Restatement (Second) of Contract states that "[i]t is sometimes said that extrinsic evidence cannot change the plain meaning of a writing, but meaning can almost never be plain except in a context . . . . Any determination of meaning or ambiguity should only be made in the light of the relevant evidence of the situation and relations of the parties, the subject matter of the transaction . . . ." Restatement (Second) of Contracts § 212 (1981) (emphasis added); see, e.g., Lincoln Elec. Co. v. St. Paul Fire & Marine Ins. Co., 210 F.3d 672, 686 (6th Cir. 2000).

A plan administrator has a duty to understand the context of the order because the determination of whether a domestic relations order is a QDRO is a

fiduciary decision. Under 29 U.S.C. § 1056(d)(3)(I), a fiduciary's obligations with respect to the distribution of benefits are discharged if the fiduciary's QDRO determinations and distributions accord with the fiduciary responsibility provisions of ERISA, codified at 29 U.S.C. §§ 1104(a)(1), 1056(d)(3)(I). See DOL Advisory Opinion 2004-02A, 2004 WL 442363, at *4; see also H.R. Rep. No. 98-655 (pt. 1) at 41 (1984).[4] These duties include the duty of prudence, defined by statute as discharging duties with "the care, skill, prudence, and diligence . . . that a prudent man . . . familiar with such matters would use[.]" 29 U.S.C. § 1104(a)(1)(B) (emphasis added). In light of these duties, Congress requires the plan's procedures for making the determination be "reasonable." 29 U.S.C. § 1056(d)(3)(F)(ii). Generally, "[p]rinciples of trust law do apply to ERISA" and inform the statutory interpretation of ERISA's fiduciary obligations. Libbey-Owens-Ford Co. v. Blue Cross & Blue Shield Mut. of Ohio, 982 F.2d 1031, 1036 (6th Cir. 1993). Simply requiring the plan administrator to check only for literal compliance with the words of the statute misunderstands the nature and context of the statutory provisions governing this fiduciary decision.

Legislative history supports the view that Congress did not intend plan fiduciaries to make determinations without understanding the context of an order

[4] Department of Labor advisory opinions warrant deference when they are persuasive and consistent with applicable law. Caremark v. Goetz, 480 F.3d 779, 789 (6th Cir. 2007).

after a diligent reading of the entire order to discern its context and intent. Congress's intent, in part, in enacting REA was to protect spouses, ex-spouses, and dependents from a deprivation of rights legitimately granted by a state order, especially when these rights to benefits are often dependent on a plan participant. E.g., H.R. Rep. No. 98-655 (pt. 1), at 23, 31 (1984) (intending to remove "any ambiguity in ERISA which might permit a pension plan to refuse to honor a legitimate state domestic relations order," because the "ability to receive payments often is dependent upon the actions of the participant."); Id. at 42 (1984) ("The Committee intends that plan administrators make every effort to assure that alternate payees receive the benefits which have been awarded them by the State domestic relations courts."). Congress thus intended a fiduciary to bear in mind the intent of the state order and to be flexible in qualifying legitimate orders. For example, Congress intended the "alternate payee" requirement, 29 U.S.C. § 1056(d)(3)(C)(i), (ii), (K), to be determined by context. The legislative history of the requirement shows that "[t]he qualified domestic relations provisions would not prevent the payment of amounts to a State agency that is an agent of an alternate payee[,]" even though the agency is not technically an "alternate payee" under a stringent application of the literal text. See Additional technical corrections to the Retirement Equity Act of 1984, The Joint Committee on Taxation, JCX-2-86, at 3 (March 20, 1986), available at

https://www.jct.gov/publications.html?func=startdown&id=3491. Accordingly, in an Advisory Opinion, DOL Advisory Opinion No. 2002-03, 2002 WL 1426140, at *2 (June 7, 2002), the Department recognized that while a government agency is not technically an "alternate payee" under the statute, the plan fiduciary may examine the "circumstances" described in the order, including the agency's legal role as "an agent for the child" for child support payments, to determine if the court order satisfies the requirement to list an "alternate payee" and to clearly specify the payee's information. Id. Consistent with the administrator's fiduciary obligations, legislative intent, and Departmental guidance, an administrator must, at a minimum, objectively understand the context of an order by examining all of the information provided in the order. [5]

The Department acknowledges, however, that the substantial compliance standard has limits. To the extent such a determination is based on subjective

[5] We are not addressing or defining the full scope of what fiduciaries' duties apply to QDRO determinations under a different set of facts. See, e.g., DOL Advisory Opinion No. 1999-13A, 1999 WL 819020, at *5 (Sept. 29, 1999); Brown v. Cont'l Airlines, 647 F.3d 221, 228 (5th Cir. 2011) (discussing fiduciary obligations when confronted with allegations of fraudulent orders). For example, Congress requires the plan administrator to examine plan records and documents related to the plan participant for a QDRO determination to ensure the order does not require the plan to provide benefits not allowed under the plan. See, e.g., 29 U.S.C. § 1056(d)(3)(D). Nor are we addressing if it is consistent with ERISA's fiduciary standards for Sun Life as plan administrator to have distributed the contested benefit without giving the alternate payee the opportunity to correct the deficiency and resubmit the DRO.

knowledge or conjecture as to the parties' or the state court's intent, the order would not meet the "clearly specifies" standard. See Hawkins, 86 F.3d at 991. Cf. Brown v. Cont'l Airlines, 647 F.3d 221, 228 (5th Cir. 2011) (not requiring inquiry into "subjective motives and intentions" in relation to alleged "sham divorces"); see also Clark, 159 F. App'x at 666 (finding the intent unclear).

Distilling these principles, the decree was in "substantial compliance" with the required elements of the statute because the plan administrator could objectively determine Sierra's entitlement to the benefits provided in the order. A fiduciary may determine that an order satisfies the "substantial compliance" test based on his examination of the content and context conveyed by the information provided in the order.[6]

D. Other Circuit Court Decisions Support the "Substantial Compliance" Standard

A substantial compliance standard has also been applied to post-REA orders by three other circuits. Metro. Life Ins. Co. v. Wheaton, 42 F.3d 1080, 1084–86 (7th Cir. 1994); Stewart v. Thorpe Holding Co. Profit Sharing Plan, 207 F.3d 1143, 1153 (9th Cir. 2000). The Tenth Circuit has a slightly more restrictive view of "substantial compliance." Hawkins, 86 F.3d at 991 (relying on Carland v. Metro.

[6] The type of plan benefits described in the order, for example, is relevant to the context of the order. In both this case and Marsh, the fact that the benefit was life insurance was pertinent to the court's analysis of whether the information in the order was ambiguous.

Life Ins. Co., 935 F.3d 1114 (10th Cir. 1991)); see also Hamilton v. Washington State Plumbing & Pipefitting Indus. Pension Plan, 433 F.3d 1091, 1097 (9th Cir. 2006) (agreeing with some aspects of Hawkins). Some district courts in other circuits have also adopted the rule. See, e.g., Einhorn v. McCafferty, 2016 WL 1273937 (E.D. Pa. 2016); Macaluso v. Myering, 2013 WL 5530620 (D. Md. Oct. 4, 2013).

In Carland, for example, the Tenth Circuit held that the plan administrator had a duty to consider the context when making a QDRO determination. In that case, the order stated that the alternate payee was to receive "the 'current value' of the policy, less one thousand dollars." 935 F.2d at 1120. The administrator argued that it was ambiguous as to whether current value related to the value at the time of divorce or the participant's death. Id. The Tenth Circuit reasoned that since the alternate payee was described as the irrevocable and sole primary beneficiary "the term 'current value' has only one meaning in this context – the value of the policy at the time of [the participant's] death." Id. The court also noted that the policy had no value when the order was entered into and the insurer had conceded that it was not under any obligation to pay the beneficiary before the participant's death, thus concluding that current value could not mean the value when they divorced. Id. Similarly, in this case, the domestic relations order "clearly contains the information specified in the statute that a plan administrator would need to make

an informed decision" based on information provided to him within the text of the order. Stewart, 207 F.3d at 1154.

In contrast, Nicholls (and Sun Life) rely primarily on the fact that Congress exempted pre-REA orders from REA's requirements. Nicholls, 788 F.3d at 84-85. Congress's exemption of all of REA's requirements merely prevents REA's retroactive application generally; it does not dictate any level of compliance, literal or substantial, or the scope of a substantial compliance standard, for post-REA orders. Before Nicholls, "'[w]hile there [wa]s some disagreement over the extent to which [the Tax Code's and ERISA's] specificity requirements may be relaxed, the cases in this area all seem to allow some degree of latitude.'" Stewart, 207 F.3d at 1153 (citation omitted); see also Hamilton, 433 F.3d at 1097. An order can achieve that clarity even where it "fail[s] to track the language of the statute," so long as "the criteria of the statute [are] satisfied in substance." Hawkins, 86 F.3d at 991. Nicholls does not provide any basis for Sun Life's argument that an inflexible literal compliance regime applies. This Court should confirm its prior unpublished decisions that Marsh's reasoning applies to both pre- and post-REA orders.

E. The Decree in This Case Substantially Complies with ERISA's Requirements

In this case, the fiduciary can unambiguously and objectively identify from the order the essential information for each statutory requirement from the information provided by the order.

Sun Life's arguments on the deficiencies of the decree in this case run counter to the "substantial compliance" standard. Sun Life argues that, even under a "substantial compliance" standard, the domestic relations order at issue is not a QDRO because it does not "state Sierra's last known mailing address or even state with which parent she would primarily reside," as required by 29 U.S.C. § 1056(d)(3)(C)(i). Plaintiff-Appellant Br., at 17. At the time of the divorce decree, she was only ten years old and the decree explicitly stated that her parents would share custody and listed both parents' addresses. Sun Life, 2016 WL 4184444, at *2. This Court has held that providing the custodial parents' address is sufficient information and equally serves as the child's mailing address. See Marsh, 119 F.3d at 422; see also Wheaton, 42 F.3d at 1084. While Sierra relied on an Ohio state case, see Sun Life, 2016 WL 4184444, at *6, the district court relied on Marsh. As with Marsh, because the decree established shared custody of the minor alternate payee and listed both parents' addresses, it satisfied the requirement to list the mailing address of the alternate payee at that time. The information within the order provided a clear context that unambiguously conveyed the “essential information,” Sierra’s address at the time of the order, as required by the statute. Sun Life's rule leads to impractical, if not impossible, results; an alternate payee would have had to hire a lawyer, go to state court, and change the state court order every time she changed addresses in order to preserve her rights.

As to the requirement that the order state the amount or percentage of benefits to be paid to each alternate payee, 29 U.S.C. § 1056(d)(3)(C)(ii), the district court correctly concluded that the QDRO clearly requires that "100% of the benefits of any policy should be paid to her[.]" Sun Life, 2016 WL 4184444, at *5. The order at issue is far less complex than the order the Court considered in Marsh. In that case, the Court found a circumstance in which the order stated that 'the two minor children should receive two-thirds of the policy,' without explicitly stating how much each should receive. Marsh, 119 F.3d at 422. In this case, the order provided for Bruce and Bridget's "minor child as primary beneficiary during her minority…until she (a) reach(es) the age of eighteen (18) or graduates from high school, whichever occurs last…" Sun Life, 2016 WL 4184444, at *2. Sierra was Bruce and Bridget's only child, and thus, the only alternate payee under the order. Though the order does not explicitly state that Sierra will receive 100% of the policy proceeds, it is the only natural reading of the order.

With respect to the requirement that an order clearly specify the benefit plan(s) to which the order applies, 29 U.S.C. § 1056(d)(3)(C)(iv), the district court here correctly concluded that the order's statement that it applied to "all employer-provided life insurance, now in existence at a reasonable cost, or later acquired at a reasonable cost" was unambiguous. Sun Life, 2016 WL 4184444, at *2 (emphasis added). The order plainly covers all life insurance plans under which the

participant is covered by his employer "now in existence" or "later acquired." Id. It does not limit the insurance to any specific insurer with which the plan may have contracted to provide benefits. This information can also be objectively determined by the plan.

Sun Life argues the order is unclear because certain life insurance policies may be provided at unreasonable cost or are not provided or subsidized by the employer. Plaintiff-Appellant Br. 14-16. However, as the district court correctly recognized, Sun Life cites no basis to suggest that the specific life insurance policy at issue here was ever acquired at an unreasonable cost, that it was not part of an employer-sponsored ERISA plan, or that it was purely funded by employee contributions. Sun Life, 2016 WL 4184444, at *7 ("In sum, the contingencies listed in the Decree, which could have resulted in uncertainty regarding whether the Policy was covered by the Decree, never occurred, and thus do not render the Decree ambiguous.") (listing "loss of employer subsidy" as a contingency that "never occurred" here). Sun Life's argument, again, results in impractical and dangerous consequences. Insurers, like Sun Life, or competing claimants, will attempt to create ambiguity by suggesting hypothetical situations for which the decree may not clearly apply. Any decree could be defeated by such a challenge. However, the only relevant question, as the district court correctly recognized, is whether the decree clearly applies to the benefits at hand; Sun Life's appeal does

not offer any basis to suggest that the policy at issue was not "employer-provided" or acquired at a "reasonable cost." This order falls well within the substantial compliance standard.

Sierra's status as alternate payee is sound regardless of the breadth of the substantial compliance standard. The plan administrator is not subject to inappropriate "litigation-fomenting ambiguities" by a requirement that it pay the benefits to the payee that the parties objectively intended to receive the benefits based on the clear text, substance, and context of the order. Cf. Kennedy v. Plan Administrator for DuPont Savings and Investment Plan, 555 U.S. 285, 302 (2009) (citing Wheaton, 42 F.3d at 1084). Nor would the court serve equity or legislative intent by insisting on perfect or near-perfect compliance, so that even slight technical deficiencies would defeat the parties' unambiguous intent as reasonably and objectively reflected in the text of the court's domestic relations order. The district court objectively and correctly determined the order's clear intent based on the substance of the order, which satisfied the statute's requirements in this case.

II. A Plan Administrator Cannot Disqualify a QDRO Solely Because the Parties Did Not Present the Order Before the Participant's Death or Satisfy State-Law Requirements That Are Not Required by ERISA

Sun Life also argues that the QDRO is not valid because (a) Sun Life was not aware of it before Bruce Jackson's death and (b) the parties to the order allegedly did not comply with its monitoring and enforcement provisions. Sun

Life's fiduciary duty was to assess the order based on ERISA's requirements. Imposing additional substantive standards on ERISA's definition of a QDRO is contrary to established law. The district court correctly held that the order did not fail to be a QDRO based on those grounds.

A. The Order Did Not Fail to Be a QDRO Merely Because the Plan Administrator Did Not Receive it Before Bruce Jackson's Death

The law is clear that a domestic relations order does not fail to be a QDRO simply because it was not presented to the plan administrator before the participant's death. In 2006, Congress directed the Secretary of Labor to issue regulations clarifying that a domestic relations order does not fail to be a QDRO solely because of the time at which it is issued. Pension Protection Act of 2006, Pub.L. 109-280, sec. 1001, 120 Stat. 780 (2006). The regulations provide several examples clarifying that a domestic relations order may still be a QDRO even if it was issued after the participant's death. 29 CFR § 2530.206(c)(2), ex. 1. Logically, an order issued before the participant's death but presented to the plan administrator after his death is likewise still a QDRO. Other circuit courts have already said as much. E.g., Files v. ExxonMobil Pension Plan, 428 F.3d 478, 488 (3d Cir. 2005); see generally Nicholls, 788 F.3d at 85-86 (compiling earlier circuit court cases).

B. The QDRO Was Not Invalid Because Sierra Jackson's Parents Failed to Comply With the Order's Monitoring or Enforcement Provisions

Just as Sun Life cannot disqualify this order because the order was not presented before the participant's death, Sun Life cannot invalidate a QDRO because the order contains monitoring and enforcement provisions unrelated to ERISA, which were allegedly not honored. ERISA requires plans to have reasonable procedures "to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders." 29 U.S.C. § 1056(d)(3)(G)(ii). In carrying out these "reasonable procedures," plan administrators cannot, of course, alter the statutory definition of what constitutes a QDRO.

As the Department has previously stated in Advisory Opinion No. 2004-02A (Feb. 17, 2004), 2004 WL 442363, at *4, "[a] plan administrator may determine that an order is not qualified only on the basis of the requirements set forth in section 206(d)(3) of ERISA[.]" The overarching thrust of the Supreme Court's decisions in Boggs, Egelhoff, and Kennedy is that states, including individual state courts, cannot insert additional conditions or rules that would disqualify otherwise legitimate QDROs under ERISA. Boggs, 520 U.S. at 850; Egelhoff v. Egelhoff, 532 U.S. 141, 147-48 (2001) ("Uniformity is impossible, however, if plans are subject to different legal obligations in different States."); Kennedy, 555 U.S. at 876-877. Allowing plan administrators or their delegates to add their own

additional elements to the definition of what constitutes a QDRO similarly undermines efforts at uniformity and serve as a further barrier to state efforts to draft orders intended to meet ERISA's requirements.

Consistent with existing law, the district court correctly held that the QDRO was not disqualified even if it had not been presented to the plan before Bruce Jackson's death or the parties to the order had not conformed to certain monitoring and enforcement provisions in the state order.

CONCLUSION

The Secretary respectfully requests this Court uphold the district court's decision.

Respectfully Submitted,

NICOLAS C. GEALE
Acting Solicitor of Labor

G. WILLIAM SCOTT
Associate Solicitor
for Plan Benefits Security

THOMAS TSO
Counsel for Appellate
and Special Litigation

/s/Stephanie Lewis
STEPHANIE LEWIS
Senior Attorney
Plan Benefits Security Division
Office of the Solicitor
U.S. Department of Labor

Room N-4611
200 Constitution Ave., N.W.
Washington, D.C. 20210
(202) 693-5588 – Phone
(202) 693-5610 - Fax

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 29(d) and 32(a)(7), I certify that this amicus brief contains 6,375 words.

Dated: July 12, 2017

/s/ Stephanie Lewis
STEPHANIE LEWIS
Senior Attorney
United States Department of Labor
Plan Benefits Security Division
200 Constitution Ave., N.W., N-4611
Washington, D.C. 20210
Telephone: (202) 693-5588
Email: lewis.stephanie@dol.gov

CERTIFICATE OF SERVICE

I hereby certify that on this day, July 12, 2017, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF THE DEFENDANT-APPELLEE FOR AFFIRMANCE with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Stephanie Lewis
STEPHANIE LEWIS
Senior Attorney
United States Department of Labor
Plan Benefits Security Division
200 Constitution Ave., N.W., N-4611
Washington, D.C. 20210
Telephone: (202) 693-5588
Email: lewis.stephanie@dol.gov