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Death is Not the End: The Second Circuit Allows Posthumous Division of Pension Benefits in *Yale-New Haven Hospital v. Nicholls*

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DEATH IS NOT THE END: THE SECOND CIRCUIT ALLOWS POSTHUMOUS DIVISION OF PENSION BENEFITS IN *YALE-NEW HAVEN HOSPITAL v. NICHOLLS*

Abstract: On June 4, 2015, in *Yale-New Haven Hospital v. Nicholls*, the U.S. Court of Appeals for the Second Circuit held that the Employment Retirement Income Security Act of 1974 ("ERISA") allows state courts to posthumously amend qualified domestic relations orders ("QDROs") to divide the pension plan benefits of a deceased plan participant. The Second Circuit joined the U.S. Court of Appeals for the Tenth Circuit in allowing QDROs to be posthumously amended. The U.S. Court of Appeals for the Third Circuit, in contrast, has ruled that upon a plan participant's death, benefits cannot be reassigned through the amendment of a QDRO. This Comment argues that the Second Circuit's interpretation of ERISA is correct. To rule otherwise would allow for externalities outside of a party's control to have significantly negative consequences for substantive rights. Furthermore, the allowance of posthumous QDROs is most aligned with the express goals of ERISA.

INTRODUCTION

During divorce proceedings, state courts attempt to establish equitable divorce agreements through division of marital property.[1] Employee pension plans are considered marital property in divorce proceedings.[2] Because a significant percentage of American workers participate in these plans, courts inev-

[1] *See In re* Marriage of Steele, 502 N.W.2d 18, 21 (Iowa Ct. App. 1993) (noting that in divorce proceedings each spouse has a claim to property acquired during the marriage). *See generally* John R. Dowd, Note, *Defining the Equitable Distribution in Mississippi: A Rebuttable Presumption That Homemaking Services Are as Valuable to the Acquisition of Marital Property as Breadwinning Services*, 16 MISS. C. L. REV. 479 (1996) (exploring the evolution of how courts in Mississippi divide property in divorce proceedings).

[2] *See In re* Marriage of Blackstone, 630 N.E.2d 541, 544–45 (Ill. App. Ct. 1994) (exploring the development of pension plans as marital property to be divided in divorce); Barr v. Barr, 11 A.3d 875, 883 (N.J. Super. Ct. App. Div. 2011) (observing that pension benefits are a marital asset that can be considered in effectuating fair property division in divorce proceedings if the benefits were obtained during marriage); Claffey v. Claffey, 822 A.2d 630, 640 (N.J. Super. Ct. App. Div. 2003) (noting that the pension benefits accumulated by either spouse during marriage become an element of the court's equation in a fair division of marital assets); Hoyt v. Hoyt, 559 N.E.2d 1292, 1294–95 (Ohio 1990) (noting that generally, marital assets include retirement benefits acquired throughout the marriage and must be contemplated when assigning domestic relations obligations).

itably divide these plans as part of an equitable divorce agreement.[3] When considering how to divide such plans in divorce agreements, state courts must consider both state divorce law and the requirements of the Employee Retirement Income Security Act ("ERISA"), a federal law that provides a comprehensive regulatory scheme for employee pension plans.[4]

In June 2015, in *Yale-New Haven Hospital v. Nicholls*, the U.S. Court of Appeals for the Second Circuit joined the U.S. Court of Appeals for the Tenth Circuit in holding that court orders amended after the death of the plan participant retroactively comply with ERISA requirements for the division of employee retirement plans.[5] The Second Circuit concluded that two amended *nunc pro tunc* orders entered by a Connecticut state court properly assigned benefits to the former spouse of the deceased plan participant.[6] In contrast, the U.S. Court of Appeals for the Third Circuit had held that such amended court orders cannot posthumously assign plan benefits because the plan participant's death eliminates any claim to the benefits.[7]

This Comment argues that the Second Circuit correctly allowed for posthumous amendment of state court orders, thereby effectively promoting the

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[3] *See* Lynch v. Lynch, 665 S.W.2d 20, 23 (Mo. Ct. App. 1983) (noting that the lower court's responsibility was to divide pension plan as part of a fair division of marital property); *see also* Press Release, Bureau of Labor Statistics, Employee Benefits in the United States— March 2015, July 24, 2015, http://www.bls.gov/news.release/pdf/ebs2.pdf [https://perma.cc/9BT9-2KNC] (noting that fifty-three percent of civilian workers, forty-nine percent of private sector workers, and eighty-one percent of state and local government workers participate in employee pension plans).

[4] *See* Employee Retirement Income Security Act of 1974 ("ERISA"), Pub. L. No. 93-406, 88 Stat. 829 (1974) (codified as amended in scattered sections of 26 and 29 U.S.C.). Section 1002 defines "employee pension benefit plan" and "pension plan" as:

> any plan, fund, or program . . . established or maintained by an employer or by an employee organization, or by both . . . [that] provides retirement income to employees, or results in a deferral of income by employees for periods extending to the termination of employment or beyond . . . .

29 U.S.C. § 1002 (2)(A) (2012); *see also In re* Gendreau, 122 F.3d 815, 817 (9th Cir. 1997) (deciding whether a domestic order was valid under ERISA); Hopkins v. AT&T Glob. Info. Sols. Co., 105 F.3d 153, 154 (4th Cir. 1997) (determining if a divorce decree properly divided a pension plan per the requirements of ERISA).

[5] *See* Yale-New Haven Hosp. v. Nicholls (*Yale-New Haven Hosp. II*), 788 F.3d 79, 86, 88 (2d Cir. 2015) (holding that amended court orders appropriately complied with ERISA requirements and therefore could assign pension plan benefits to the former spouse of the deceased plan participant instead of his widow); Patton v. Denver Post Corp. (*Patton II*), 326 F.3d 1148, 1154 (10th Cir. 2003) (holding that a posthumously amended court order can appropriately assign plan benefits).

[6] *See Yale-New Haven Hosp. II*, 788 F.3d at 81. *Nunc pro tunc* is a Latin expression meaning "now for then." *Nunc Pro Tunc*, BLACK'S LAW DICTIONARY (10th ed. 2014). Generally, a *nunc pro tunc* court ruling applies retroactively to correct an earlier ruling. *See* Snodgrass v. Snodgrass, 88 N.E.2d 616, 618 (Ohio Ct. App. 1948) (noting that a *nunc pro tunc* order is used to correct a judicial record that does not properly reflect the intended judgment of the court).

[7] *See* Samaroo v. Samaroo (*Samaroo II*), 193 F.3d 185, 186–87 (3d Cir. 1999) (holding that a court order obtained after a participant's death was not valid because benefits cannot vest after a participant's death).

aims of ERISA.[8] This Comment also argues that a minor amendment to ERISA would adequately address the concerns of the Third Circuit that posthumous amendments of state court orders are an impermissible division of pension benefits.[9] Part I of this Comment discusses the factual and procedural history of *Yale-New Haven Hospital* and reviews the legislative history of ERISA.[10] Part II explains the split between the Second, Third, and Tenth Circuits in determining whether ERISA authorizes posthumous court orders to be applied retroactively.[11] Finally, Part III argues that the Tenth and Second Circuits correctly interpreted Congress's intent by holding that ERISA allows for retroactive application of posthumous court orders.[12]

I. THE LEGISLATIVE HISTORY OF ERISA AND *YALE-NEW HAVEN HOSPITAL*

Congress enacted the Employee Retirement Income Security Act in 1974 to protect employees participating in employee pension plans.[13] By establishing a uniform national regulatory scheme for such plans, Congress hoped to encourage employers to partake in employer-funded pension plans through efficient and consistent regulation.[14] This uniform regulatory scheme, however, has not been without issues: courts have struggled to apply the anti-alienation provision of ERISA to divorce agreements containing pension plans.[15] Section

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[8] *See infra* notes 84–94 and accompanying text.

[9] *See infra* notes 95–103 and accompanying text.

[10] *See infra* notes 13–55 and accompanying text.

[11] *See infra* notes 56–83 and accompanying text.

[12] *See infra* notes 84–103 and accompanying text.

[13] *See* 29 U.S.C. § 1001b (2012) (providing Congressional findings that the Employee Retirement Income Security Act's changes to the pension system would boost the probability of employees receiving benefits upon retirement). Momentum for the creation and subsequent passage of ERISA is often associated with the shutdown of the Studebaker-Packard facility in Indiana in 1963, which left many workers without their expected pensions due to a grossly underfunded plan. *See* JAMES A. WOOTEN, THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974: A POLITICAL HISTORY 51 (2001). ERISA was passed to protect employees' interests in pension plans and to ensure proper payouts on retirement. *See id.* at 1.

[14] *See* Donald T. Bogan, *ERISA: The Savings Clause, § 502 Implied Preemption, Complete Preemption, and State Law Remedies*, 42 SANTA CLARA L. REV. 105, 117–18 (2001) (noting that Congress chose the language of ERISA specifically to encourage the use of ERISA-covered retirement plans by providing employers with a consistent regulatory scheme rather than varying state regulations); Katherine A. McAllister, Note, *A Distinction Without a Difference? ERISA Preemption and the Untenable Differential Treatment of Revocation-on-Divorce and Slayer Statutes*, 52 B.C. L. REV. 1481, 1484 (2011) (describing Congress's motivation in passage of comprehensive and uniform regulation).

[15] *See* 29 U.S.C. § 1056(d)(1) (2012). ERISA requires that benefits in a pension plan cannot be "assigned or alienated." *Id.* When dividing pension plans in divorce agreements, courts were conflicted about whether divorce-related property divisions violated the anti-alienation clause of ERISA. *Compare* Am. Tel. & Tel. Co. v. Merry, 592 F.2d 118, 121 (2d Cir. 1979) (holding that there was an implied exception to ERISA's anti-alienation language for family support payments), *with* Monsanto Co. v. Ford, 534 F. Supp. 51, 54 (E.D. Mo. 1981) (holding that distributing benefits from a pension plan to a former spouse violated ERISA's anti-alienation clause).

A of this Part examines the development of ERISA and its effect on the division of pension plans as marital property in divorce agreements.[16] Section B of this Part details *Yale-New Haven Hospital v. Nicholls*, a case in which the U.S. Court of Appeals for the Second Circuit interpreted ERISA's anti-alienation clause.[17]

A. History of ERISA's Anti-Alienation Clause

In order to secure the financial future of employees, a primary goal of ERISA, Congress included in ERISA an anti-alienation provision that mandated that pension benefits could not be "assigned or alienated."[18] This provision protected employees by ensuring that the funds paid into the pension plans could not be assigned to a creditor and therefore be unavailable upon retirement.[19] Following ERISA's enactment, courts were unsure whether ERISA's anti-alienation clause allowed pension plans to be divided in divorce proceedings.[20] ERISA's anti-alienation clause explicitly prohibits alienation or assignment of pension benefits, but there was no guidance for state courts as to whether that prohibition applied in divorce proceedings, which require an equitable division of marital property.[21]

The confused status of pension benefits in divorce agreements ultimately led to the adoption of the Retirement Equity Act of 1984 ("REA"), which established a narrow exception to ERISA's anti-alienation clause: the qualified domestic relations order ("QDRO").[22] A state court domestic relations order is

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[16] *See infra* notes 18–32 and accompanying text.

[17] *See infra* notes 33–55 and accompanying text.

[18] *See* 29 U.S.C. § 1001b (providing Congressional findings that the passage of ERISA would increase the likelihood of plan participants and their beneficiaries receiving a full payout of their benefits); *see also id.* § 1056(d)(1) (noting that the benefits of pension plans covered under ERISA cannot be "assigned or alienated").

[19] *See* Robert S. Melson, *Are Your Pension Benefits Safe from Creditors?*, BENEFITSLINK.COM (1995), http://benefitslink.com/articles/creditors.html [https://perma.cc/Z428-GVE4] (discussing how the anti-alienation clause ensures that pension benefits do not get assigned to another party, especially creditors, even in bankruptcy).

[20] C*ompare* Carpenters Pension Tr. v. Kronschnabel, 460 F. Supp. 978, 982 (C.D. Cal. 1978) (holding that pension division between divorcing spouses recognizes a preexisting property right, an implicit joint ownership rather than an alienation or assignment forbidden by ERISA), *with* Francis v. United Techs. Corp., 458 F. Supp. 84, 86 (N.D. Cal. 1978) (noting that garnishment for family support obligations is irreconcilable with ERISA's anti-alienation clause).

[21] *See* DAVID CLAYTON CARRAD, THE COMPLETE QDRO HANDBOOK: DIVIDING ERISA, MILITARY, AND CIVIL SERVICE PENSION AND COLLECTING CHILD SUPPORT FROM EMPLOYEE BENEFIT PLANS 3 (3d ed. 2009). Carrad notes that ERISA's anti-alienation clause was at tension with domestic relations law as it related to pension divisibility. *Id.* States have a strong interest in retaining control of the distribution of pension benefits in divorce because the division of assets upon divorce is linked to support obligations. *See* Boggs v. Boggs, 520 U.S. 833, 848 (1997) (explaining that Congress probably did not intend to disturb states' rights to adjudicate domestic support obligations).

[22] *See* Retirement Equity Act of 1984 ("REA"), Pub. L. No. 98-397, 98 Stat. 1426 (1984) (amending various provisions of 29 U.S.C. §§ 1001–1401); *cf.* Julie McDaniel Dallison, Comment,

a judgment or order that conveys domestic relations rights in accordance with state law.[23] To be classified as a QDRO, a domestic relations order must meet specific requirements enumerated in the REA.[24] QDROs act as an instrument for a divorced spouse to receive distribution of pension benefits as marital property upon divorce.[25]

Obtaining a QDRO can be an extensive process, sometimes complicated by the death of the plan participant.[26] To accommodate this, ERISA provides for an eighteen-month determination period during which the administrator must determine whether a domestic relations order satisfies the strict requirements to be a valid QDRO.[27] For a domestic relations order to retroactively

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Disappearing Interests: ERISA Impliedly Preempts the Predeceasing Nonemployee Spouse's Community Property Interest in the Employee's Retirement, 49 BAYLOR L. REV. 477, 483 (1997) (stating that the REA was passed as a solution to state courts' problem of how to divide a pension plan to reflect a nonemployee spouse's marital interest in the pension plan).

[23] *See* 29 U.S.C. § 1056(d)(3)(B)(i)–(ii) (2012) (defining a qualified domestic relations order). Some examples of domestic relations rights are child support and alimony. *See id.*

[24] *Id.* The statute defines a domestic relations order as:

> any judgment, decree, or order (including approval of a property settlement agreement) which—(I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and (II) is made pursuant to a State domestic relations law (including community property law).

Id. A qualified domestic relations order ("QDRO") is a "domestic relations order—(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan . . . ." *Id.* In order to qualify as a QDRO, an order must specify:

> (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.

Id. § 1056(d)(3)(C).

[25] *See* Dallison, *supra* note 22, at 484 (noting that a party who is not the plan participant can only receive a payout from a plan administrator if that party has a QDRO).

[26] *See In re* Gendreau, 122 F.3d at 819 (noting that Congress recognizes that the process for obtaining a QDRO is time intensive); *see also* Gary Shulman, *QDROs: The Ticking Time Bomb*, 23 FAM. ADVOC. 26, 26 (2000–01) (noting that "[m]ost family law attorneys are aware of the potential adverse consequences of a participant's dying before the QDRO is drafted," and warning that former spouses often do not receive pension benefits they are entitled to pursuant to a separation agreement because he or she did not receive a valid QDRO prior to the plan participant's death).

[27] *See* 29 U.S.C. § 1056(d)(3)(G)(II), (H)(i)–(v). These ERISA provisions direct the plan administrator to determine, within a reasonable period of time after a domestic relations order is submitted for qualification, whether the order meets the requirements for a QDRO. *See id.* During this period, a pension plan must set aside the benefits that are potentially payable to the holder of the unclassified domestic relations order. *See id.* § 1056(d)(3)(H)(i); *see also* Trs. of the Dirs. Guild of Am. v. Tise, 234 F.3d 415, 422 (9th Cir. 2000) (stating that Congress intended the determination period to allow former spouses to remedy any errors in the original domestic relations order that would not allow the order to be classified as valid QDRO).

provide benefits, a determination that the order satisfies the QDRO requirements must be made within the eighteen-month determination period.[28] Any determination made after the eighteen-month period only applies prospectively.[29]

By incorporating the REA, ERISA provides former spouses with a mechanism to claim a portion of a pension plan participant's benefits without running afoul of the anti-alienation clause.[30] Despite resolving the issue of whether pension benefits can be distributed as marital property upon divorce, courts remain divided on when a former spouse of a deceased plan participant may obtain a QDRO that impacts the division of that property.[31] The Second Circuit confronted this issue in *Yale-New Haven Hospital* when it was asked by a plan administrator to resolve competing claims for plan benefits brought by both the widow and the former spouse of a deceased plan participant.[32]

B. The Second Circuit Addresses Posthumous QDROs in Yale-New Haven Hospital v. Nicholls

On September 5, 2008, Harold Nicholls and Claire Nicholls were divorced in Connecticut state court and granted a dissolution of marriage judgment.[33] Mr. Nicholls married Barbara Nicholls in 2009 and died in February 2012.[34] At the time of his death, Mr. Nicholls was an employee of Yale-New Haven Hospital and a participant in four employee retirement and pension

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[28] *See* 29 U.S.C. § 1056(d)(3)(H)(i)–(v) (detailing the procedures of the eighteen-month determination period, including a requirement that the plan administrator must adhere to accounting requirements during the determination period as articulated by ERISA).

[29] *See id.* § 1056(d)(3)(H)(iv) (explaining when a QDRO can offer prospective or retroactive relief).

[30] *See id.* § 1056(d)(3) (enumerating the requirements for a domestic relations order to be considered a QDRO); David J. Guin, *The Retirement Equity Act of 1984: One Step Forward, Two Steps Back*, 37 ALA. L. REV. 163, 163 (1985) (exploring Congress's intent in the passage of the Retirement Equity Act ("REA")); *see also* CARRAD, *supra* note 21, at 4 (noting that the REA states the procedures that pension plans covered under ERISA must follow in order to decide if a court order qualifies as a QDRO).

[31] *See* Steven P. Smith, *Traps of the Unwary: Avoiding Problems with Employee Benefit Plans in Divorce*, J. KAN. BAR ASS'N, Feb. 2011, at 24, 25 (exploring potential problems divorce attorneys face when obtaining QDROs during divorce proceedings). *Compare Patton II*, 326 F.3d at 1154 (holding that a QDRO can be obtained after the death of a plan participant), *with Samaroo II*, 193 F.3d at 190 (holding that the death of a plan participant is a cutoff for a former spouse to obtain a QDRO).

[32] *See Yale-New Haven Hosp. II*, 788 F.3d at 81. The plan administrator filed an interpleader claim. *See id.* An interpleader claim occurs when two parties claim a right to the same thing, and a third party, here the plan administrator, files a lawsuit in order to force the parties to litigate their title between themselves. *See Interpleader*, BLACK'S LAW DICTIONARY (9th ed. 2009).

[33] Yale-New Haven Hosp. v. Nicholls (*Yale-New Haven Hosp. I*), No. 3:12-CV-01319, 2013 WL 6331256, at *1 (D. Conn. Dec. 5, 2013), *aff'd in part, rev'd in part*, 788 F.3d 79 (2d Cir. 2015). As part of the divorce, a settlement agreement awarded Claire Nicholls half of Harold Nicholls's retirement accounts. *Id.*

[34] *Yale-New Haven Hosp. II*, 788 F.3d at 83.

plans managed by the hospital.[35] Though Barbara Nicholls was the beneficiary of all four plans, the plans were included in the dissolution of marriage judgment between Mr. Nicholls and Claire Nicholls.[36] Additionally, Claire Nicholls asserted that Mr. Nicholls was uncooperative in helping her to obtain a valid QDRO prior to his death.[37]

In June and August 2012, two *nunc pro tunc* orders from the Connecticut Superior Court directed Yale-New Haven Hospital, the plan administrator of Mr. Nicholls's retirement and pension plans, to distribute the benefits in three of Mr. Nicholls's plans to Claire Nicholls.[38] Subsequently, Yale-New Haven Hospital received competing claims from Barbara Nicholls for the three retirement and pension plans specified in the *nunc pro tunc* orders as well as a claim for the fourth plan that was not included in the *nunc pro tunc* orders.[39] Yale-New Haven Hospital then filed an interpleader action as plan administrator in federal district court to resolve the competing claims.[40] The role of a plan administrator is to manage the plan and to follow the terms of the plan.[41] The district court granted summary judgment in favor of Claire Nicholls, holding that the dissolution of marriage judgment entered in 2008 "substantially complied" with ERISA's requirements for QDROs.[42]

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[35] *Id.* Mr. Nicholls participated in the following plans:

> (1) the Yale-New Haven Hospital Cash Account Pension Plan ("CAP Plan"), (2) the Yale-New Haven Hospital Matching Tax Shelter Annuity Plan ("Matching Plan"), (3) the Yale-New Haven Hospital Section 403(b) Tax-Sheltered Annuity Plan ("403(b) Plan"), and (4) the Yale-New Haven Hospital and Tax-Exempt Affiliates 457 Non-Qualified Deferred Compensation Plan ("457 Plan").

Id.

[36] *See id.* at 81.

[37] *See id.* at 89 (Wesley, J., concurring in part and dissenting in part).

[38] *Id.* at 83 (majority opinion). The *nunc pro tunc* orders mentioned (1) the CAP Plan, (2) the Matching Plan, and (3) the 403(b) Plan. *Id.* Neither order mentioned the fourth plan, the 457 Plan. *See id.* The *nunc pro tunc* orders explicitly stated that they were intended to be QDROs as defined by ERISA. *See id.* The amount in dispute from the retirement plans totaled $351,392.52. *See Yale-New Haven Hosp. I*, 2013 WL 6331256, at *1.

[39] *See Yale-New Haven Hosp. I*, 2013 WL 6331256, at *1.

[40] *See Yale-New Haven Hosp. II*, 788 F.3d at 83.

[41] Cigna v. Amara, 563 U.S. 421, 422 (2011) (noting that the plan administrator acts as a "trustee-like fiduciary" in managing the plan and following the terms of the plan); *see* 29 U.S.C. § 1002(16)(A) (defining an administrator as "the person specifically so designated by the terms of the instrument under which the plan is operated").

[42] *See Yale-New Haven Hosp. I*, 2013 WL 6331256, at *3. The district court relied on reasoning from the Second Circuit's 2002 decision in *Metropolitan Life Insurance Co. v. Bigelow* that an order that "substantially complies" with ERISA requirements is a valid QDRO. *See* Metro. Life Ins. Co. v. Bigelow, 283 F.3d 436, 444 (2d Cir. 2002); *Yale-New Haven Hosp.*, 2013 WL 6331256, at *3. In the *Bigelow* court's view, a plan administrator must accept such an order or otherwise abuse their discretionary authority. *See Bigelow*, 283 F.3d at 444; *Yale-New Haven Hosp. I*, 2013 WL 6331256, at *3. ERISA explicitly states that "property settlement agreements" are domestic relations orders, and Claire Nicholls and Mr. Nicholls's divorce agreement included division of the retirement plans, which is marital property. *See* 29 U.S.C. § 1056(d)(3)(B)(ii) (2012) (defining what constitutes a domestic

On appeal, the Second Circuit reviewed the "substantial compliance" standard used by the district court and considered whether the *nunc pro tunc* orders constituted valid QDROs.[43] The Second Circuit reversed the district court's finding that the dissolution of marriage judgment constituted a QDRO and rejected the "substantial compliance" standard as applied in this case.[44] The court, however, held that Claire Nicholls had valid QDROs under ERISA.[45] The court concluded that the *nunc pro tunc* orders issued by the Connecticut state court were valid QDROs despite being entered after the death of Mr. Nicholls.[46] According to the Second Circuit, Congress, in passing the Pension Protection Act, clearly intended posthumous QDROs to be a valid method for former spouses to receive benefits to which they are entitled.[47]

Additionally, the Second Circuit reasoned that in cases in which a domestic relations order has been entered giving pension or retirement benefits to someone other than the surviving spouse, the plan administrator must establish the status of the domestic relations order as a valid or invalid QDRO before rights to the plan benefits can be granted.[48] Until the domestic relations order

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relations order); *Yale-New Haven Hosp. I*, 2013 WL 6331256, at *3. The orders, therefore, substantially complied with the QDRO requirements under ERISA. *See id.*

[43] *See Yale-New Haven Hosp. II*, 788 F.3d at 84 (holding that the "substantial compliance" standard was not appropriate given the passage of the REA, but holding that the court orders were valid QDROs despite their posthumous nature). Barbara Nicholls raised two arguments on appeal: (1) Claire Nicholls and Mr. Nicholls's divorce agreement did not meet the enumerated requirements for a QDRO under ERISA, and (2) the *nunc pro tunc* orders could not be valid QDROs due to the posthumous timing of their acquisition. *Id.*

[44] *See id.* The "substantial compliance" standard cannot apply to orders obtained after the date the REA was enacted. *See id.* at 85. Therefore, the Nicholls's settlement agreement could only be considered a QDRO if it met the requirements of a QDRO as specified in the REA, which it did not. *See id.* (holding that the "substantial compliance" rule used in *Bigelow* was only appropriate in that case because the divorce agreement between those parties was entered prior to the passage of the REA).

[45] *See Yale-New Haven Hosp. II*, 788 F.3d at 85.

[46] *See id.* The *nunc pro tunc* orders were only valid QDROs as to the CAP Plan, the Matching Plan, and the 403(b) Plan. *Id.* Because the 457 Plan was not named in either *nunc pro tunc* order, Claire Nicholls did not have a QDRO for that plan, and the court reversed the district court's determination relating solely to that plan. *See id.*

[47] *See id.* at 86; *see also* Pension Protection Act of 2006, Pub. L. No. 109-280, § 1001, 120 Stat. 780, 1052–53 (2006). Similar to the passage of ERISA, Congress passed the Pension Protection Act to protect the stability of pension plans while also decreasing the number of underfunded pension funds. *See* Robert S. Keebler, *Pension Protection Act of 2006*, 9 J. RETIREMENT PLAN. 39, 39 (2006). Additionally, a portion of the Pension Protection Act asserted that the timing of when a QDRO is obtained cannot act as the sole reason for its disallowance. *See Yale-New Haven Hosp. II*, 788 F.3d at 86 (quoting § 1001, 120 Stat. at 1053).

[48] *See Yale-New Haven Hosp. II*, 788 F.3d at 87. ERISA does not allow for automatic vesting in the surviving spouse when it is unclear whether a domestic relations order giving benefits to another person, such as a former spouse, is a QDRO. *See* 29 U.S.C. § 1056(d)(3)(H) (2012) (describing the procedure that plan administrators must undergo when determining whether a domestic relations order is a QDRO); Hillary Greer Fike, *QDROs: The High Price of Poor Drafting—Part II*, COLO. LAW., Sept. 1999, at 89 (explaining how the eighteen-month determination period affects a lawyer's drafting of a QDRO). During the course of an eighteen-month determination period, the plan administrator

is found to be a QDRO, a valid alternate payee can overtake a surviving spouse's interest in the plan benefits.[49] Consequently, the Second Circuit concluded that Barbara Nicholls's rights to the plan benefits did not fully mature when Mr. Nicholls died, despite the fact that she was a surviving spouse.[50] Accordingly, the court held that a QDRO could be retroactively applied even when acquired posthumously.[51]

In dissent, Judge Wesley argued that the majority erred in holding that the two state court *nunc pro tunc* orders were valid QDROs.[52] The dissent argued that the orders could not be valid QDROs because they were entered posthumously.[53] In the dissent's view, posthumous QDROs require a reassignment of benefits that is not sanctioned by law.[54] In addition, Judge Wesley argued that to retroactively apply the *nunc pro tunc* orders permits a state court to bypass ERISA's statutory scheme concerning the alienation of pension benefits.[55]

II. Circuits Struggle with Interpreting Congress's Intent in the Retirement Equity Act of 1984

Since the enactment of the Retirement Equity Act in 1984, courts have struggled with the question of whether the REA, as incorporated in ERISA, authorizes the use of posthumous QDROs to assign benefits to former spouses.[56] *Yale New Haven Hospital v. Nicholls*, a 2015 decision by the U.S. Court of Appeals for the Second Circuit, is the most recent attempt by courts to an-

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must separate the benefits that will be paid if the domestic relations order is validated as a QDRO. *See* 29 U.S.C. § 1056(d)(3)(H).

[49] *See* 29 U.S.C. § 1056(d)(3)(H).

[50] *See Yale-New Haven Hosp. II*, 788 F.3d at 88 (noting that a surviving spouse's interest in plan benefits cannot fully mature until a plan administrator clarifies the validity of a domestic relations order); *see also* 29 U.S.C. § 1056(d)(3)(H)(i) (describing the accounting procedures that a plan administrator must follow until the status of the domestic relations order has been determined).

[51] *See Yale-New Haven Hosp. II*, 788 F.3d at 88.

[52] *See id.* at 89, 93 (Wesley, J., concurring in part and dissenting in part) (arguing that benefits vest automatically in a surviving spouse and QDROs cannot re-vest those same benefits in a former spouse).

[53] *See id.* at 92–93. Judge Wesley adopted the view that a surviving spouse's interest in plan benefits completely matures at a plan participant's time of death and therefore the benefits cannot be given to a former spouse due to ERISA's anti-alienation provisions. *See id.* at 93 (arguing that plan benefits do not belong to the estate of a plan participant but must be given to a surviving spouse at the time of a plan participant's death); *see also* § 1056(d)(3)(A) (noting that the anti-alienation clause does not apply to a QDRO).

[54] *See Yale-New Haven Hosp. II*, 788 F.3d at 90 (arguing that posthumous QDROs that result in benefits that have already vested being reassigned is explicitly disallowed by ERISA).

[55] *See id.* at 92 (arguing that allowing the *nunc pro tunc* orders to be effective at a date prior to the order being entered would illegally avoid the requirements implemented by ERISA).

[56] *Compare* Hogan v. Raytheon, Co., 302 F.3d 854, 857 (8th Cir. 2002) (noting that plan participant's death prior to court entering a domestic relations order does not automatically disqualify order from being QDRO), *with* Ross v. Ross, 705 A.2d 784, 797 (N.J. Super. Ct. App. Div. 1998) (holding that QDRO could not be entered after the death of plan participant).

swer this question.[57] Prior to the Second Circuit's decision in *Yale New Haven Hospital,* the U.S. Courts of Appeals for the Third and Tenth Circuits heard cases analyzing the validity of posthumous QDROs and reached different conclusions.[58] Section A of this Part examines the Third Circuit's 1999 decision in *Samaroo v. Samaroo*, which disallowed the assignment of pension benefits to former spouses through posthumous QDROs.[59] Section B details the Tenth Circuit's 2003 decision in *Patton v. Denver Post*, which held that the REA, as incorporated in ERISA, allows for the use of posthumous QDROs.[60]

A. Third Circuit: Posthumous QDROs Are Invalid

In 1999, in *Samaroo v. Samaroo*, the U.S. Court of Appeals for the Third Circuit held that posthumous QDROs are invalid under ERISA.[61] The case concerned former spouses who divorced in 1984.[62] Their divorce decree granted the former spouse an interest in her ex-husband's pension benefits.[63] The divorce decree, however, did not explicitly include the pre-retirement survival annuity that the pension plan provided for a surviving spouse in the event of the plan participant's death prior to retirement.[64] The ex-husband died two years before retirement, which is when his benefit payments were scheduled to automatically begin, but because the plan participant did not reach retirement age prior to his death, the plan administrator was not obligated to pay the benefits from the plan.[65] Subsequently, his former spouse received an amended di-

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[57] *See* Yale-New Haven Hosp. v. Nicholls (*Yale-New Haven Hosp. II*), 788 F.3d 79, 85 (2d Cir. 2015).

[58] *See* Patton v. Denver Post Co. (*Patton II*), 326 F.3d 1148, 1154 (10th Cir. 2003) (holding that a QDRO can be obtained after the death of a plan participant); Samaroo v. Samaroo (*Samaroo II*), 193 F.3d 185, 190 (3d Cir. 1999) (holding that the death of a plan participant is a cutoff for obtaining a QDRO for a former spouse).

[59] *See infra* notes 61–73 and accompanying text.

[60] *See infra* notes 74–83 and accompanying text.

[61] *See Samaroo II*, 193 F.3d at 191 (holding that allowing posthumous QDROs amounts to an increase in a pension plan's payment obligations, which is illegal under ERISA); Bruce L. Richman, *Tax Trips & Traps: Dividing Retirement Benefits*, FAM. ADVOC., Fall 2001, at 36, 36 (demonstrating the need to draft a QDRO at the time of divorce settlement in order to ensure it will be honored by a plan administrator); Smith v. Estate of Smith, 248 F. Supp. 2d 348, 354–55 (D.N.J. 2003) (noting that a domestic relations order can only be a QDRO if it does not result in increased liability for the plan).

[62] *See* Samaroo v. Samaroo (*Samaroo I*), 743 F. Supp. 309, 311 (D.N.J. 1999).

[63] *See id.* at 311. A mutually agreed-upon property settlement within the divorce decree divided the ex-husband's monthly retirement pension benefits evenly between the two former spouses. *See Samaroo II*, 193 F.3d at 187.

[64] *See Samaroo II*, 193 F.3d at 187.

[65] *See id.* Because Mr. Samaroo did not reach the requisite age to qualify to receive pension payments for the plan in the settlement agreement, the plan never became payable. *See id.* Accordingly, in the court's view, because the plan never became payable, the settlement agreement did not contain any benefits payable to his former spouse. *See id.*

vorce decree that awarded her the survival annuity that had not been named in the original divorce decree.[66]

On appeal, the Third Circuit reasoned that the amended divorce decree issued by the state did not constitute a valid QDRO because it was issued after the death of the plan participant.[67] According to the court, pension benefits must be calculated as of the date that the benefits become payable and cannot be reassigned after this determination.[68] In the court's view, QDROs—including those entered posthumously—cannot increase benefits to be paid out of a plan beyond what the plan anticipated based on actuarial calculations.[69] The court held that QDROs that do increase benefits to be paid in excess of what the plan anticipated are therefore invalid and unenforceable.[70]

Dissenting, Judge Mansmann rejected the majority's reasoning and conclusion.[71] Judge Mansmann asserted that to disallow posthumous QDROs jeopardized states' ability to govern their own domestic relations law, specifically the division of pensions as marital assets.[72] Judge Mansmann's dissent served as the foundation for the majority's opinion in *Patton v. Denver Post*.[73]

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[66] *See id.* at 188. The district court granted summary judgment in favor of the plan administrator, asserting that the amended divorce decree could not be a valid QDRO. *See id.*

[67] *See Samaroo II*, 193 F.3d at 191. The court noted that when a plan participant does not either remarry or provide an alternate payee to a survivor's annuity, after the plan participant's death the rights to the survivor's annuity essentially do not exist and therefore cannot be assigned using a posthumous QDRO. *See id.*

[68] *See id.* at 189–90.

[69] *See* 29 U.S.C. § 1056(d)(3)(D) (2012); *Samaroo II*, 193 F.3d at 189–90. The district court reached the conclusion that the former spouse attempted, through the amended divorce decree, to receive plan benefits beyond those she was entitled to at the initial date of determination, which in the court's view was not legal under ERISA. *See Samaroo II*, 193 F.3d at 189. The *Samaroo* court affirmed the district court's reasoning and condemned the validity of the amended order as a QDRO. *Id.* at 191.

[70] *See Samaroo II*, 193 F.3d at 189–90 (noting that any domestic court order that increases the amount of money that a plan owes cannot be a QDRO no matter the language and proposed power of the order under state law).

[71] *See id.* at 192–93 (Mansmann, J., dissenting) (arguing that allowing state courts to amend divorce decrees retroactively is in line with the separation of powers between state and federal courts and allows fair pension benefit distribution in general by protecting state law interests).

[72] *See id.* at 193–94 (arguing that federal law should not allow courts to completely oppose the explicit function of state *nunc pro tunc* orders). Judge Mansmann asserted that the "evident purpose" of the REA's QDRO provisions is to "avoid undue interference" with the resolution of a crucial area of domestic relations law. *See id.* He asserted that any timeline not contemplated by ERISA interferes with state courts' ability to divide marital assets justly. *Id.*; *see* Brandon Carney, Comment, *Till Death Do Us Part—And Then Some: The Effect of a Party's Death During Dissolution*, 25 J. AM. ACAD. MATRIM. LAW. 153, 176 (2012) (noting that obtaining a QDRO after the divorce is final places parties at risk of a potentially unavailable *nunc pro tunc* order); *see also Patton II*, 326 F.3d at 1153 (holding that *nunc pro tunc* orders can be QDROs because *nunc pro tunc* orders function to address minor errors of the court and do not fundamentally change the facts of a case).

[73] *See Patton II*, 326 F.3d at 1153.

B. Tenth Circuit: Posthumous QDROs Are Valid

In 2003, in *Patton v. Denver Post*, the U.S. Court of Appeals for the Tenth Circuit ruled that posthumous QDROs are a valid method to secure pension plan benefits so long as the QDRO fits within the requirements of ERISA.[74] In *Patton*, a former spouse received a portion of her ex-husband's pension benefits through a divorce decree.[75] After her ex-husband's death, the former spouse learned of an undisclosed pension plan and petitioned the state court to divide the undisclosed plan in the same way as the previously divided plan.[76] The state court issued a *nunc pro tunc* domestic relations order for the undisclosed plan.[77] When the former spouse submitted the order to the plan administrator, the plan administrator refused to recognize her as a beneficiary of her ex-husband's plan.[78] The administrator argued that because the ex-husband's pension benefits had lapsed when he died, the former spouse's court order could not be a QDRO.[79]

On appeal, the Tenth Circuit rejected the pension plan's position that ERISA requires a beneficiary of a pension plan to file a QDRO prior to the plan participant's death.[80] The *Patton* court interpreted ERISA's eighteen-month determination period provision in § 1056(d) to indicate that ERISA anticipates and accounts for the possibility of posthumous QDROs.[81] Consequently, the court encouraged state courts to widely administer retroactive re-

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[74] *See Patton II*, 326 F.3d at 1152–54; *see also* Shulman, *supra* note 26, at 26 (exploring drafting of QDROs in the period after the Third Circuit's decision in *Samaroo II*). *Compare Patton II*, 326 F.3d at 1151 (holding that QDROs attained posthumously are valid under ERISA), *with Samaroo II*, 193 F.3d at 186 (finding that posthumous QDROs are not valid under ERISA and cannot assign benefits to former spouses).

[75] *See* Patton v. Denver Post Co. (*Patton I*), 179 F. Supp. 2d 1232, 1233–34 (D. Colo. 2002), *aff'd*, 326 F.3d 1148 (10th Cir. 2003) (detailing the separation agreement between the former spouses and the circumstances that resulted in the unintentional nondisclosure).

[76] *See id.* at 1233–34. Both parties supplied financial information while negotiating the divorce agreement. *See Patton II*, 326 F.3d at 1150. When the ex-husband asked his employer about his pension benefits his employer only revealed information about a single pension plan, even though the ex-husband was a plan participant in two plans. *See id.* One plan was inadvertently omitted. *See id.*

[77] *See Patton I*, 179 F. Supp. 2d at 1234.

[78] *See Patton II*, 326 F.3d at 1150.

[79] *See id.* at 1153. The plan administrator's argument was an extension of the majority's decision in *Samaroo*. *See id.* at 1153; *see also Samaroo II*, 193 F.3d at 186.

[80] *See Patton II*, 326 F.3d at 1151–52. In rejecting the pension plan's argument that ERISA requires establishment of the right to pension benefits with a QDRO prior to the death of the participant, the court explained that this is not an explicit requirement in the statute. *See id.*; *see also Hogan*, 302 F.3d at 857 (holding that a domestic relations order can posthumously be ruled a QDRO); Albert Feuer, *Who Is Entitled to Survivor Benefits from ERISA Plans?*, 40 J. MARSHALL L. REV. 919, 990–91 (exploring how the death of a plan participant affects survivor benefits and the attainability of QDROs).

[81] *See Patton II*, 326 F.3d at 1152–53.

lief in the area of domestic relations.[82] In 2015, in *Yale-New Haven Hospital*, the U.S. Court of Appeals for the Second Circuit joined the Tenth Circuit, holding that posthumous QDROs are valid under ERISA and can be used to assign benefits to former spouses as part of a divorce agreement.[83]

III. POSTHUMOUS QDROS ARE ESSENTIAL TO DIVISION OF DIVORCE ASSETS AND THE NEXT STEP FOR ERISA

The U.S. Courts of Appeals for the Second and Tenth Circuits correctly held that posthumous QDROs are valid under ERISA.[84] First, this Part argues that the Second Circuit's 2015 holding in *Yale-New Haven Hospital v. Nicholls* is in line with Congress's intent in the passage of ERISA and subsequent passage of the REA.[85] Next, this Part argues that invalidation of posthumous QDROs is inherently flawed because to do so significantly perverts the power of state courts to render equitable division of assets upon divorce.[86] Finally, this Part argues that Congress should further amend ERISA to provide for a firm and unambiguous deadline on the submission and enforcement of posthumous QDROs.[87]

First, the Second Circuit's ruling in *Yale-New Haven Hospital* allowing for posthumous QDROs aligns closely with the REA's goal of equitable retirement plan distribution upon divorce.[88] Allowing the untimely death of a plan participant to effectively circumvent a divorce agreement would make this goal unattainable.[89] Accordingly, the Second Circuit correctly held that post-

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[82] *See id.* at 1154 ("If necessary changes once effected by the state court are not then recognized by plan administrators or by federal courts adjudicating disputes, state courts are effectively stripped of their ability to equitably distribute marital assets in a divorce.").

[83] *See Yale-New Haven Hosp. II*, 788 F.3d at 85.

[84] *See* Yale-New Haven Hosp. v. Nicholls (*Yale-New Haven Hosp. II*), 788 F.3d 79, 85 (2d Cir. 2015); Patton v. Denver Post Co. (*Patton II*), 326 F.3d 1148, 1154 (10th Cir. 2003); *see also* Nathan Ross, *A Power Struggle of Mythic Proportion: In the World of ERISA, Are Retirement Plan Administrators the Real Gods of Olympus?*, 46 VAL. U. L. REV. 529, 553 (2012) (noting that language of ERISA supports allowance of posthumous QDROs and that courts are likely to depart from the *Samaroo II* decision); Shulman, *supra* note 26, at 28 (criticizing the Third Circuit's unwillingness to permit changes to a QDRO after the death of a participant in *Samaroo II*).

[85] *See infra* notes 88–90 and accompanying text.

[86] *See infra* notes 91–94 and accompanying text.

[87] *See infra* notes 95–103 and accompanying text.

[88] *See Yale-New Haven Hosp. II*, 788 F.3d at 85 (holding that *nunc pro tunc* orders are QDROs irrespective of whether they are obtained posthumously); *see also* Ablamis v. Roper, 937 F.2d 1450, 1453 (9th Cir. 1991) (noting that, when pension benefits are a marital asset, Congress intended the REA to protect ex-wives and their financial security); Stahl v. Exxon Corp., 212 F. Supp. 2d 657, 667 (S.D. Tex. 2002) (noting that Congress strengthened protections for divorced spouses through passage of the REA by safeguarding their interests in pension benefits earned during marriage); S. REP. NO. 98-575, at 12 (1984), *as reprinted in* 1984 U.S.C.C.A.N. 2547, 2558 (examining the policy behind the amendment of ERISA through the passage of the REA).

[89] *Compare Patton II*, 326 F.3d at 1151 (demonstrating an instance in which the plan participant's untimely death did not result in the former spouse losing benefits to which she was entitled), *with*

humous QDROs are valid, ultimately avoiding the unfair distribution of marital assets and most effectively effectuating the goals of the REA, as incorporated in ERISA.[90]

Second, the Second Circuit was correct to allow posthumous QDROs because to disallow them perverts the power of state courts to render equitable division of assets upon divorce.[91] State courts are best situated to determine equitable pension distribution in divorce agreements.[92] Allowing states to issue posthumous QDROs places legal decisions related to domestic relations in the jurisdiction most skilled to handle such issues.[93] Additionally, if allowed to issue posthumous QDROs, state courts will be empowered to protect the former spouse's interest in pension benefits—a goal of the REA.[94]

Allowing for posthumous QDROs best aligns with the express purposes of ERISA and the REA.[95] ERISA, however, should be further amended to include a firm timeline in which posthumous QDROs will be considered for relief.[96] If the REA forces plan administrators to consider all posthumous

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Samaroo v. Samaroo (*Samaroo II*), 193 F.3d 185, 186 (3d Cir. 1999) (demonstrating a former spouse's loss of agreed-upon benefits solely because of the untimely death of a plan participant).

[90] *See Yale-New Haven Hosp. II*, 788 F.3d at 83; *see also* Ross, *supra* note 84, at 555 (arguing that Congress should overrule *Samaroo II* and other cases in line with its holding by clarifying that eighteen-month determination period can be used for securing a QDRO); Shulman, *supra* note 26, at 28 (asserting that dissent in *Samaroo II* is correct way to view posthumous QDROs).

[91] *See Yale-New Haven Hosp. II*, 788 F.3d at 88; *see also* Trs. of the Dirs. Guild of Am. v. Tise, 234 F.3d 415, 419 (9th Cir. 2000) (suggesting that before Congress amended ERISA with the REA, there was a circuit split regarding the scope and viability of state court orders from domestic relations proceedings as to ERISA-covered pension plans); Bonnie Moore, *Federal Jurisdiction and the Domestic Relations Exception: A Search for Parameters*, 31 UCLA L. REV. 843, 844 (1984) (discussing how the domestic relations exception to ERISA's preemption clause essentially suggests that divorce can be regulated by federal courts).

[92] *See Samaroo II*, 193 F.3d at 193–94 (Mansmann, J., dissenting) ("The evident purpose of the ERISA's recognition of QDROs is to avoid undue interference with state courts' fulfillment of that charge.").

[93] *See Ex parte* Burrus, 136 U.S. 586, 593–94 (1890) (noting that the "whole subject of the domestic relations of husband and wife . . . belongs to the laws of the states, and not to the laws of the United States"); *see also* Jonathon Dotson, Egelhoff v. Egelhoff*: The Supreme Court's Latest Attempt to Clarify ERISA Preemption and the Decision's Effect on Texas State Law*, 54 BAYLOR L. REV. 503, 507 (2002) (noting two exceptions to states' domestic relations preemption of federal law: (1) Congress's express intent to preempt and (2) significant harm to federal interests).

[94] *See* Dallison, *supra* note 22, at 484 (discussing how Congress enacted the REA to solve inequitable divorce proceedings with regard to the interests that a plan participant's former spouse accrued during marriage); *see also supra* notes 22–32 and accompanying text (discussing the primary goal of the REA: the financial security of divorcées).

[95] *See* CARRAD, *supra* note 21, at 3 (noting that Congress's purpose for amending ERISA through passage of the REA was to protect the financial future of the former spouses of plan participants). *But see* Hopkins v. AT&T Glob. Info. Sols. Co., 105 F.3d 153, 157 (4th Cir. 1997) (finding that a QDRO must be obtained when benefits vest in a beneficiary or the benefits should not be distributed to a former spouse).

[96] *See* 29 U.S.C. § 1056(d)(3)(E) (2012); Ross, *supra* note 84, at 556 (noting that if alternate payees promptly submit court orders, they are less likely to lose their intended pension benefits). This

QDROs, regardless of when or how they are attained, some of the problems described by the U.S. Court of Appeals for the Third Circuit in 1999, in *Samaroo v. Samaroo*, would become more likely.[97] Additionally, uncertain liability would increase the potential costs of dispute resolution, which would likely lead to fewer retirement plans that are covered by ERISA.[98] The eighteen-month determination period already incorporated in ERISA can be used as a firm cutoff for plan administrators who are considering whether a posthumous order is a valid QDRO.[99] If a plan administrator receives notice of a domestic relations order within the eighteen-month determination period, the order must be confirmed or denied as a QDRO.[100] If a plan administrator receives notice outside of the eighteen-month determination period, however, no relief should be granted.[101] Such a firm deadline would further ERISA's goal to protect the interests of plan participants and their beneficiaries while also assuring the cost of operating a retirement plan covered by ERISA remains low.[102] In doing so, the goal of a uniform regulatory scheme that promotes retirement plan coverage can be achieved.[103]

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provision provides an eighteen-month determination period during which the plan administrator determines whether a domestic relations order meets the requirements of a QDRO. *See id.*

[97] *See Samaroo II*, 193 F.3d at 191. The *Samaroo II* court illustrated the dangers inherent in posthumous QDROs by referencing a 1996 case from the U.S. District Court for the Eastern District of Michigan, *Payne v. GM/AUW Pension Plan*. *See id.* (citing Payne v. GM/UAW Pension Plan, No. 95-CV-73554DT, 1996 WL 943424 (E.D. Mich. May 7, 1996)). In *Payne*, the former spouse of a plan participant obtained an amended divorce decree that granted her proceeds from her former husband's annuity despite his objections during their divorce proceedings while he was alive. *See Payne*, 1996 WL 943424, at *3. The court classified the former spouse's order as a QDRO even though it was submitted after her former husband's remarriage and death. *See id.* at *4. This was largely because her former husband and his new wife were not married long enough for his new wife to have a viable interest in the survivor's benefits. *See id.* at *7.

[98] *See* WOOTEN, *supra* note 13, at 13 (noting that state legislators began to support passage of ERISA after state laws governing pensions proved expensive).

[99] *See* 29 U.S.C. § 1056(d)(3)(H)(i)–(v) (describing the procedures a plan administrator must follow during the eighteen-month determination period).

[100] *See id.*; *see also* Terrence Cain, *A Primer on the History and Proper Drafting of Qualified Domestic-Relations Orders*, 28 T.M. COOLEY L. REV. 417, 457 (2011) (noting that the purpose of the eighteen-month determination period is to allow courts to remedy domestic relations orders so that they can be classified as QDROs).

[101] *See* Torres v. Torres, 60 P.3d 798, 819 (Haw. 2002) (noting that the bright-line rule of the eighteen-month QDRO determination period provides plan administrators with certainty regarding how to administer benefits).

[102] *See* Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 54 (noting that ERISA was passed to protect workers and to encourage employers to form pension plans through uniformity and certainty); Joanne Sammer, *An Uncertain Future for Defined-Benefit Plans*, BUSINESSFINANCE (Dec. 1, 2005), http://businessfinancemag.com/hr/uncertain-future-defined-benefit-plans [https://perma.cc/M6GD-TM6Y] (noting that uncertainty in plan contributions and increased cost of operating pension plans have led companies to stop offering pension plans).

[103] *See* 29 U.S.C § 1056(d)(3)(E) (2012); *see also* Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 142 (1990) (noting that through ERISA, Congress sought to minimize companies' administrative costs in complying with the competing requirements of state and federal laws).

Conclusion

The Second and Tenth Circuits have correctly ruled that posthumous domestic relations orders that adhere to ERISA's QDRO requirements can legitimately divide pension benefits between divorced spouses. Allowing for posthumous QDROs closely aligns with the express purposes of ERISA and decreases the likelihood of a grossly inequitable and unreasonable outcome for a former spouse. Although correctly applying the law, the Second Circuit's decision in *Yale-New Haven Hospital v. Nicholls* failed to address potential abuses of allowing for posthumous QDROs. To prevent abuses of QDROs, ERISA should be further amended to include a firm timeline during which a court may consider posthumous QDROs for relief for a former spouse.

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