

1 conclude as a matter of law that (Pinkard) relinquished her expectancy interest as the
2 beneficiary of the worker's compensation annuity. The decree of dissolution, which
3 incorporated the property settlement agreement, terminated her interest as a beneficiary of
4 the annuity.

5 *Id.*, 647 N.W.2d at 89. See Discussion in Respondent's Answering Brief at 39-45.

6 All of these cases cite to *Fox Valley & Vicinity Constr. Workers Pension Fund v. Brown*, 897
7 F.2d 275 (7th Cir. 1990), which stands for the proposition that a court should look to state law to
8 determine what constitutes a "waiver" or "relinquishment," because ERISA does not address what
9 constitutes a proper waiver. Additional authorities that have come to our attention regarding the
10 federal common law of permitting waiver or relinquishment of beneficiary status in a property
11 settlement agreement or divorce decree include *Estate of Altobelli v. IBM*, 77 F.3d 78 (4th Cir. 1996);
12 *Brandon v. Travelers Ins. Co.*, 18 F.3d 1321 (5th Cir. 1994); *Mohamed v. Kerr*, 53 F.3d 911 (8th Cir.
13 1995); *Manning v. Hayes*, 212 F.3d 866 (5th Cir. 2000); *Weaver v. Keen*, 43 S.W.3d 537 (Tex. Ct.
14 App. 2001).

15 One of this line of cases is notable because the state court chose to directly apply the
16 applicable state law *as* the applicable federal common law, in determining that the decedent's
17 widow, and not his ex-wife, was the appropriate beneficiary of the survivorship benefits. See
18 *Emmens v. Johnson*, 923 S.W.2d 705 (Tex. Ct. App. 1996).

19 As explained in detail in the briefs, the main distinction between the cases cited above and
20 this appeal is that, in *this* case, the determination of waiver/relinquishment by Janis was made during
21 the worker's *lifetime*, and only the pendency of this litigation has prevented entry of the QDROs
22 necessary to attempt to carry that intention to fruition. See RAB at 66-68. This should make the
23 result both clearer and easier to reach than in several of those opinions, which attempted to divine
24 intent post-death.

25 In fact, one other recent decision goes to that very point, specifically authorizing the entry
26 of a QDRO, after the death of the worker, in order to carry into effect the decision of the trial court
27 as to who should receive the survivorship benefits. See *Patton v. Denver Post Corp.*, 326 F.3d 1148
28 (10th Cir. 2003) (under ERISA, there is no requirement that a domestic relations order be prepared

1 or submitted either at the time of divorce or at any other particular time). *See* RAB at 32-33 (going
2 over string of district court orders that clarified the ownership of the survivor benefits.

3 Also in *Patton*, the court reiterated that, a domestic relations order must be qualified by the
4 plan administrator in order to become a QDRO and in order for the benefits to be distributed
5 according to the terms of the QDRO. The domestic relations order must fit within the requirements
6 of ERISA. ERISA requires that in order to be “qualified,” a domestic relations order may not
7 provide a type or form of benefit or an option not otherwise provided by the plan, require the plan
8 to provide increased benefits, or divest a beneficiary under an earlier established QDRO. 29 U.S.C.
9 § 1056(d)(3)(D)(i)-(iii). In the present case, no benefit not otherwise provided in the plan is being
10 sought, nor is either of the plans in question being asked to revoke the benefit election – only to
11 change the named beneficiary.

12 These additional authorities are respectfully submitted to this Court in the hope that they will
13 be useful in resolution of this appeal.

14 Respectfully submitted,
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded via United States Postal Service, postage prepaid in full to:

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