

NO. A07-2034

State of Minnesota
In Supreme Court

Patricia A. Langston,

Appellant,

v.

Wilson-McShane Corporation, as Administrator
for the Twin Cities Carpenters and Joiners Pension Fund, and
the Twin Cities Carpenters and Joiners Pension Fund,

Respondents.

RESPONDENTS' BRIEF AND APPENDIX

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	4
STANDARD OF REVIEW.....	17
SUMMARY OF THE ARGUMENT.....	17
ARGUMENT.....	18
I. THE MINNESOTA COURT OF APPEALS CORRECTLY RULED THAT FEDERAL DISTRICT COURTS ARE VESTED WITH EXCLUSIVE JURISDICTION OVER THE QUESTION OF WHETHER A DOMESTIC RELATIONS ORDER IS “QUALIFIED” AS DEFINED BY 29 U.S.C. §1056(d) (ERISA § 206).....	18
A. Langston’s Complaint States a Claim for Relief Available Only Under 29 U.S.C. §1132(a)(3), Which Falls Within the Exclusive Jurisdiction of the Federal District Courts.....	20
B. Appellant’s Arguments Ignore ERISA’s Statutory Framework.....	24
C. The Authority Cited By Appellants Renders ERISA’s Text Meaningless and Contradicts Department of Labor Regulations....	26
CONCLUSION.....	34
INDEX TO APPENDIX.....	35

TABLE OF AUTHORITIES

Federal Cases

<u>Aetna Health , Inc. v. Davila</u> , 542 U.S. 200, 124 S.Ct. 2488 (2004)	20
<u>Alessi v. Raybestos-Manhattan, Inc.</u> , 451 U.S. 504, 101 S.Ct. 1985 (1981)	20
<u>Board of Trustees of Laborers Trust Fund for Northern California v. Clevon Levingston</u> , 816 F.Supp. 1496 (N.D. Cal. 1993).....	30
<u>Boggs v. Boggs</u> , 520 U.S. 833, 117 S.Ct.1754 (1997)	28
<u>Christianson v. Colt Industries Operating Corp.</u> , 486 U.S. 800 (1988).....	26
<u>Dial v. NFL Player Supplemental Disability Plan</u> , 174 F.3rd 606 (5th Cir. 1999).....	25
<u>Hogan v. Raytheon Co.</u> , 302 F.3rd 854 (8th Cir. 2002).....	25
<u>Hopkins v. AT & T Global Information Solutions, Co.</u> , 105 F.3rd 153.....	24, 25
<u>Jones v. American Airlines, Inc.</u> , 57 F.Supp.2d 1224 (D.Wyo. 1999).....	31
<u>Massachusetts Mut. Life Ins. Co. v. Russell</u> , 473 U.S. 134, 105 S.Ct. 3085 (1985)	21
<u>Mertens v. Hewitt Associates</u> , 508 U.S. 248, 113 S.Ct. 2063 (1993)	20
<u>Pilot Life Ins. Co. v. Dedeaux</u> , 481 U.S. 41, 107 S.Ct. 1549 (1987)	20, 21
<u>Rouse v. Daimler Chrysler Corporation UAW</u> , 300 F.3rd 711 (6th.Cir. 2002).....	25
<u>Samaroo v. Samaroo</u> , 193 F.3d 185, 189 (3rd Cir.1999).....	25

State Cases

<u>Bode v. Minnesota Department of Natural Resources</u> , 612 N.W.2d 866 (Minn. 2000).....	17
<u>Frost-Benco Electrical Association v. Minnesota Public Utilities Commission</u> , 358 N.W.2d 639 (Minn. 1984).....	17

Hengel v. Hyatt, 318, 252 N.W.2d 105 (Minn. 1977)..... 17

In re Marriage of Levingston, 12 Cal.App.4th 1303 (Cal. Ct. App. 1993).....30

In re Marriage of Oddino, 16 Cal. 4th 67, 936 P.2d 1266 (Cal. 1997)..... 31

Welter v. Welter, 2004 WL 2163149 (Minn.App. 2004).....28

Federal Statutes

29 U.S.C. § 100120

29 U.S.C. § 1056..... 1, 8, 17, 18, 19, 21, 22,
23, 24, 27

29 U.S.C. § 1132..... .1, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32

Other Authorities

Congressional Conference Committee Report, H.R. Conf. Rep. No. 1280, 93rd Cong.,
2nd Sess. 1974.....29

U.S. Department of Labor, The Division of Pensions Through Qualified Domestic
Relations Orders.....29

STATEMENT OF THE ISSUES

- I. Did the Court of Appeals err in ruling that federal courts have exclusive jurisdiction over the question of whether domestic relations orders are “qualified” as that term is defined by the Employee Retirement Income Security Act of 1974 (ERISA), as amended?

The lower (trial) court determined that it had subject matter jurisdiction over the question of whether Respondent’s domestic relations order was “qualified.”

See Minn.R.Civ.P. 60.02(d)
29 U.S.C. § 1132(a); 29 U.S.C. § 1132(e)
29 U.S.C. § 1056(d)(3)
Hogan v. Raytheon Co., 302 F.3rd 854 (8th Cir. 2002)
Welter v. Welter, 2004 WL 2163149 (Minn.App. 2004)

STATEMENT OF THE CASE

Respondent Patricia Ann Langston (“Langston”) filed suit in Anoka County District Court in December, 2007 seeking declaratory relief, claiming a domestic relations order (“DRO”) issued by the Anoka County District Court on August 10, 2005 was a “qualified” domestic relations order (“QDRO”) as that term is defined by the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). Respondents Twin Cities Carpenters & Joiners Pension Fund and Wilson McShane Corporation (collectively referred to as the “Fund”) inadvertently neglected to file and serve an Answer to the Complaint. Langston then filed a Motion for Default Judgment, but did not serve the Fund or its counsel with notice of the motion.

On April 18, 2007, the Motion for Default Judgment came on for hearing before the Honorable Jenny Walker Jasper (“Judge Walker Jasper”). Since it had not received notice of the motion, the Fund did not make an appearance. On April 19, 2007, Judge Walker Jasper issued Findings of Fact, Conclusions of Law, and Order for Judgment (“Default Order”) declaring the DRO “qualified” under ERISA, ordering the Fund to commence monthly benefit payments calculated as provided for in the DRO as of August 10, 2005, and awarding Langston her requested attorneys’ fees and costs of \$1,996.00.

Upon receipt of the Notice of Entry of Judgment, the Fund moved to vacate the Default Judgment and leave to file an Answer. See (Motion to Vacate; R. App. 080). In support of this motion, the Fund argued that the Default Judgment was void because the Anoka County District Court lacked subject matter jurisdiction over the determination of

whether a DRO is “qualified” under ERISA, or in the alternative, the Fund satisfied the Minn. R. Civ. P. 60 and case law requirements for vacating the Default Judgment.

On June 18, 1007, the Fund’s Motion to Vacate was heard before the Honorable Sharon L. Hall (“Judge Hall”). On August 22, 2007, Judge Hall issued an Order and Memorandum denying the Motion. Judge Hall ruled that state and federal courts have concurrent subject matter jurisdiction over the determination of whether a DRO is “qualified” under ERISA. Judge Hall also denied the Fund’s Motion to Vacate, applying the incorrect legal standard in determining that the Fund lacked a reasonable defense on the merits, and that Langston would be substantially prejudiced if the Default Judgment was vacated. Judge Hall also ordered the Fund to commence monthly payments to Langston effective as of the date of the Default Judgment on April 18, 2007. The Fund appealed Judge Hall’s Order.

On December 9, 2008, the State of Minnesota Court of Appeals reversed the lower court (Judge Hall), holding that whether a domestic relations order may be deemed “qualified” for purposes of ERISA is “a federal question over which state courts do not have concurrent subject matter jurisdiction.” (Order, December 9, 2009). The lower court also held that the trial court had also abused its discretion in denying the Fund’s motion to vacate the default judgment under Minn. R. Civ. Pro. 60.02. On January 9, 2009, Langston filed a Petition for Review of the decision of the Court of Appeals, alleging the lower appellate court departed from settled authority and the plain language of the ERISA in determining that Minnesota state courts do not have concurrent jurisdiction over the determination of whether a domestic relations order is “qualified”

under ERISA. On February 25, 2009, this court granted Langston's Petition for Review as to this issue. Langston filed and served her brief on April 27, 2009.

STATEMENT OF FACTS¹

The Parties

Respondent Twin City Carpenters & Joiners Pension Fund ("Fund") is a multi-employer, defined benefit plan established and administered in accordance with the provisions of ERISA. (Complaint ¶ 2. R.App. 1-3); See also (Affidavit of Laurie A. Coleman ("Coleman Aff.") ¶ 4. R.App. 027). Appellant Wilson McShane Corporation is a Minnesota business corporation and is the third-party administrator for the Fund. (Complaint at ¶ 3. R.App. 1); See also (Affidavit of David S. Anderson ("Anderson Aff.") ¶ 4; R.App.030). Langston married Gary Langston on September 5, 1964. Coleman Aff. at ¶ 3; R.App. 020, See also (Judgment and Decree ("J & D"), Ex. A to Affidavit of Thomas F. DeVincke, dated June 11, 2007, ("DeVincke Aff."), p. 2; A.App. A004). At that time, as well as at certain other times relevant to this litigation, Gary Langston was a participant in the Fund. (Coleman Aff. at ¶ 3; R.App. 33).

The Divorce

The Langston marriage was dissolved pursuant to a J & D, entered on August 3, 1993 in Anoka County District Court. (Complaint at ¶ 5. J & D, Ex. A to DeVincke Aff.; A.App. A004). Pursuant to the J & D, Langston was awarded, amongst other things, a

¹ The Statement of Facts submitted herein substantially incorporates the Statement of Facts previously submitted by the Fund in its brief filed with the Minnesota Court of Appeals on December 31, 2007, and as such, was substantially authored by McGrann Shea Anderson Carnival Straughn & Lamb, Chtd., Appellant's former counsel.

one-half interest in the marital share of future pension payments to be received by Gary Langston. Id. at pp. 6-7; A0009-A0010. Additionally, the J & D ordered that, in the event that Gary Langston's pension plan allowed him to elect survivor benefits, Gary Langston was ordered to elect Langston as his surviving beneficiary. Id.

The Summary Plan Description ("SPD") for the Fund, which was distributed to all Fund participants, and also available by contacting Wilson McShane, provided "if your marital status changes or there are other changes in your personal life which affect the name of your beneficiary, contact the Fund office." (SPD, p. 32. R.App. 066). Indeed, the Fund's governing documents create no affirmative obligation on the Fund to comb the records of courthouses throughout the United States to find documents purporting to change the legal status of its participants so as to affect administration of the Fund. See generally (SPD; R.App. 060, pp. 75-121 and Plan Document, R. App., 113, pp. 122-198).²

Accordingly, at the time the J & D was issued, it was either Gary Langston's responsibility to provide a copy of the J & D to the Fund or otherwise provide notice of his changed legal status as the "participant," or it was Langston's obligation to provide a copy of the J & D or other notice to the Fund as the holder of an Order purporting to affect the legal status of a Fund participant. However, neither Langston, nor Gary

² The Board of Trustees for the Fund issues both Summary Plan Descriptions and Plan Documents. The Summary Plan Description summarizes the benefits available to participants and is drafted in terms that are easy for participants to understand. The Plan Document is the Fund's governing document and sets forth all of the participant's and beneficiary's rights and benefits together with the Fund's obligations. See R. App. 060-113.

Langston, provided a copy of the J & D or any other notice to the Fund. (Coleman Aff. at ¶ 8. R.App. 027).

Gary Langston's Second Marriage and Retirement

Approximately eight years after the J & D was finalized, in July 2001, Gary Langston married Shelly James ("James"). (Coleman Aff. at ¶ 3; R.App. 027). As of that time, no one had provided any notice to the Fund regarding any aspect of the Langston divorce. Id. at ¶ 8; R.App. 027. On June 12, 2004, Gary Langston retired and submitted an application for benefits to the Fund. (Coleman Aff. at ¶ 6; R.App. 027). As part of the application process, Langston was required to select one of the seven types of benefits available under the Fund. (SPD, pp 8-9. R. App. 066, pp. 89-90, Plan Document pp. 31-48 R.App. 113, pp. 156-173). Gary Langston elected to receive a fifty percent joint and survivor annuity benefit and elected James, his then current wife, as his surviving annuitant. (Coleman Aff. at ¶ 6; R.App. 027). Pursuant to the terms of the Plan Document, a joint and survivor benefit election cannot be revoked once benefit payments commence. (Amendment 11 to the Plan Document p. 2; R.App. 055). Upon receipt of the application, the Fund performed various actuarial calculations to arrive at Gary Langston's Normal Retirement Benefit of \$2,825.63 per month for the remainder of his life, and upon his death, \$1,412.81 per month for the remainder of James' life. Id. See also (SPD, p. 8; R.App. 060). In June, 2004, no one had provided any notice to the Fund regarding any aspect of the Langston's prior divorce. (Coleman Aff. at ¶ 8; R.App. 027). Accordingly, the Fund approved the application and Gary Langston's benefits commenced on July 1, 2004. Id.

The Domestic Relations Order

Despite the fact that the J & D was finalized and entered in August of 1993, Langston did not obtain a DRO until July 1, 2005. See (DRO, Ex. B. to DeVincke Aff. A.App.; A0018-A0020). A copy of this DRO was not provided to the Fund until August 10, 2005—some twelve years after the entry of the J & D. (Coleman Aff. at ¶ 8. R.App. 027). The DRO identified Langston as the alternate payee of a portion of Gary Langston’s interest in the Fund and provided, in relevant part:

(D) **Amount.** The Alternate Payee is hereby assigned 50% of the retirement benefits otherwise payable to the Participant in accordance with the terms of the Plan derived from his accrued vested benefit accumulated from September 5, 1964 through August 3, 1993. The Alternate Payee shall have no rights in or to the portion of the Participant’s accrued benefit under the Plan not assigned by this Order, or to any benefit earned by the Participant after August 3, 1993.

(E) **Distribution.** The accrued benefit assigned by this Order shall be paid to the Alternate Payee in the form of an annuity payable over her lifetime with monthly payments commencing when the participant reaches or would have reached his earliest retirement age under the Plan...In the even the Participant dies before payments to the Alternate Payee begin, the Alternate Payee shall be considered the “surviving spouse” of the Participant for purposes of section 205 of [ERISA]. (emphasis added)

* * * * *

(G) **Continued Jurisdiction.** In the event the Plan Administrator determines that this order is not a Qualified Domestic Relations Order, both parties shall cooperate with the Plan Administrator to make the changes necessary for it to become a qualified order. (emphasis added)

See (DRO, Ex. B to DeVincke Aff., p. 2 A0019).

The Fund's Review of the DRO

Upon receipt of the DRO, and in compliance with ERISA and the Fund's own procedures, the Fund reviewed the DRO to determine whether it was qualified, as the term "qualified" is defined by ERISA, such that it met the enumerated requirements for DRO's set forth in 29 U.S.C. § 1056. (Coleman Aff. at ¶ 9; R.App. 027). The Fund determined that the DRO could not be "qualified" for two reasons, and it promptly advised Langston of those reasons in a letter dated August 18, 2005 ("Letter"). See (Letter, Ex. D. to DeVincke Aff. A.App. A0022-A0023).

The first reason that the DRO could not be "qualified" was because the DRO required payments to be made to Langston in the form of an annuity payable over Langston's lifetime. Id. This type of annuity was not available to Langston because, pursuant to the unambiguous terms of the SPD and Plan Document, the benefits could only be payable over Gary Langston's lifetime. Id.; see also (SPD, p. 10; R.App. 060 and Plan Document p. 35 R.App. 113). Even if the SPD and Plan Document would have allowed benefits to be calculated over Langston's lifetime, from an actuarial standpoint, the Fund could not turn back the clock and re-determine the benefits over a different person's—Langston's—lifetime, especially in light of the fact that the benefits had already been determined, were in pay status, and were therefore irrevocable. Id.; see also (Amendment 11 to the Plan Document p. 2; R.App. 055). As a result, the only payment method available to Langston pursuant to the Plan Document was a shared payment

method whereby she would receive a portion of the monthly benefit being paid to Gary Langston, as calculated over Gary Langston's lifetime. Id.

The second reason that the DRO could not be "qualified" was because the DRO provided that, in the event that Gary Langston pre-deceased Langston prior to the commencement of any payments, Langston was to be considered the surviving spouse thereby entitling her to survivor benefits. (Letter, Ex. D. to DeVincke Aff. A.App. A0022-A0023). However, because Gary Langston married James and elected James as his beneficiary, and no one notified the Fund of the J & D, Gary Langston's survivor benefits had vested in James on the date Gary Langston retired pursuant to the unambiguous terms of the SPD and Plan Document. Id.; see also (SPD p. 10; R.App. 060 and Plan Document p. 35; R. App. 113). Therefore they could not be removed from James and paid to Langston. Id.

Langston's Subsequent Inaction and Gary Langston's Death

In the August 18, 2005 letter, the Fund invited Langston to submit a revised DRO correcting the defects. See (Letter, Ex. D. to DeVincke Aff. A.App. 86-87). But Langston chose not to do so, and never sought nor submitted a revised DRO to the Fund despite the fact that the Judge issuing the DRO specifically retained jurisdiction to make any changes to the DRO that might be deemed necessary by the Fund and ordered the parties to cooperate with the Fund to make any changes necessary for the DRO to become "qualified." Coleman Aff. at ¶ 11. A.App. 34-35, see also DRO, Ex. B to DeVincke Aff., p. 2 A.App. 83, SPD, p. 32 A.Add. 113. Nevertheless, in accordance with ERISA, the Fund withheld \$381.38, the amount that would have been payable to

Langston from Gary Langston's monthly pension benefit—for the benefit of Langston for the months of September and October, 2005. Coleman Aff. at ¶ 11 A.App. 34-35.

Thereafter, on October 19, 2005, Gary Langston died. See (Death Certificate, Ex E to DeVincke Aff. A.App.88). Accordingly, the Fund had no choice but to begin paying the survivor annuity to James in November 2005, as was required by Gary Langston's beneficiary designation and the terms of the SPD and Plan Document. (Coleman Aff. at ¶ 12; R. App. 027; see also SPD p. 18; R. App. 060; and Plan Document, p. 42; R. App. 113). Indeed, as of his death, Gary Langston was no longer a Fund "participant," so no changes running through him could be effected by any Order of any Court pursuant to the terms of the Plan, without due process at minimum involving the new vested benefit holder—James. (SPD, p. 1; R. App. 060 and Plan Document p. 10; R. App. 113).

The Family Court Proceedings

After Gary Langston's death, Langston brought a Motion to Show Cause and/or Enforce Court Order against the Fund in her marital dissolution action in Anoka County District Court. See (Order Denying Motion to Show Cause ("Show Cause Order"), Ex A. to Anderson Aff.; R.App 030). On June 26, 2006, prior to the hearing on this Motion, the Fund's counsel sent a letter to Langston's counsel advising that the Motion was ill advised. (Counsel Letter, Ex. F. to DeVincke Aff. A0025-A0026). The letter reiterated the DRO's defects such that, in light of Gary Langston's beneficiary designation, the Fund was already properly paying survivor benefits to James. Id. The Fund further advised Langston that it would continue to hold the previously withheld payments for Langston's benefit for eighteen months from the date that the original DRO was

submitted; and if no revised DRO was submitted during that time which could be qualified, the payments would revert back to Gary Langston's estate. Id. Nevertheless, Langston proceeded with the Motion in her dissolution action. (Show Cause Order, Ex A. to Anderson Aff.; R.App. 030). The Honorable Nancy Logering denied Langston's Motion finding that the Court lacked jurisdiction over the Fund for purposes of determining the DRO "qualified," and thus the Court determined that it could not compel the Fund's adherence to the DRO. Id. Langston requested reconsideration of this ruling, but the request was denied. (Order Denying Request for Reconsideration, Ex B. to Anderson Aff.; R.App. 030).

The State Court Action

Langston next filed a Complaint for declaratory relief in Anoka County District Court seeking a declaration from the Court that the DRO was "qualified" under ERISA. See (Complaint; R.App. 1-3). The Summons and Complaint were served on Wilson McShane, the Fund's agent for the service of process on January 5, 2007. (Coleman Aff. at ¶ 13; R.App. 027). Wilson McShane sent a copy of the Summons and Complaint to the Fund's counsel by facsimile; but the Fund's counsel mistakenly believed these documents related to the family court matter that had retained jurisdiction over modification and amendments to the DRO, to which the Fund was not a party, so the Fund did not timely Answer the Complaint. Id.; (Anderson Aff. at ¶¶ 2-6; R.App.030).

On March 2, 2007, Langston moved for a default judgment pursuant to Rule 55 of the Minnesota Rules of Civil Procedure, but did not serve or notify the Fund, or Fund Counsel, with any motion papers. (Anderson Aff. at ¶ 6; R. App. 030). As a result, the

Fund did not appear at the default hearing on April 18, 2007, before Judge Walker Jasper. Id.

Judge Walker Jasper proceeded to grant Langston's Motion for Default Judgment and issued an Order to that effect on April 19, 2007. (Default Order; A.App. 004). The Default Order declared the DRO "qualified" under ERISA, it provided that any interpretation by the Fund to the contrary was null and void, it required the Fund to calculate monthly benefit payments as set forth in the DRO—irrespective of the terms of the SPD and Plan Document, to remit past payments to Langston commencing on August 10, 2005, the day the DRO was first served on the Fund, and it required the Fund to remit future payments in accordance with the DRO and the J & D irrespective of any rights already vested in Gary Langston's second-wife, James. (Default Order pp. 3-4 A.App. 14-15). The Default Order also awarded Langston attorneys' fees in the amount of \$1,440.00, as well as costs in the amount of \$556.00. Id.

The Fund received the Notice of Entry of Judgment on April 23, 2007. (Anderson Aff. at ¶ 5; R. App. 030). Working as expeditiously as possible, on May 4, 2007, the Fund filed a lengthy Motion to Vacate. In support of its Motion to Vacate, the Fund argued: (1) that the State Court did not have subject matter jurisdiction over a challenge to the Fund's determination that the DRO was not "qualified" under ERISA, and therefore, the Default Order was void; and (2) that the Fund satisfied the balancing test Minnesota courts apply for vacating default judgments pursuant to Minn.R.Civ.P. 60.02. See generally (Appellants' Memorandum in Support of Motion to Vacate Default Judgment and for Leave to Answer, ("Appellant's Memo."); R.App. 008; 010).

Elaborating on its first argument—lack of subject matter jurisdiction, the Fund pointed out that the threshold issue in dispute between the parties was whether or not the DRO constituted a “qualified” DRO under ERISA and that subject matter jurisdiction to hear any challenge to a plan administrator’s decision about the qualified status of a DRO lies exclusively in the Federal Courts. Id. at pp. 9-10 R.App. 010. Turning to its second argument—vacation of the default judgment, the Fund argued that at least three of the four factors to be examined by courts in determining whether to vacate a default judgment in Minnesota strongly weighed in favor of the Fund, and the fourth reasonable-excuse-for-not-timely-answering factor was not so bad as to defeat the strong showing on the other three factors. (Appellant’s Memo. pp. 10-16; R.App. 010).

Specifically, the Fund argued that it could present a reasonable defense on the merits, such that the DRO could not be “qualified” under ERISA because the DRO required a type of payment to Langston that was not available to her; and that certain benefits ordered in the DRO could not be provided to Langston because they had already vested in James upon Gary Langston’s retirement. Id. The Fund also conceded that it had a weak excuse for not timely answering, but that it was not so weak as to overcome strong showings on the other three factors. Id. The Fund further argued that it acted with due diligence after receiving the Notice of Entry of Judgment because the Motion to Vacate was served and filed within two weeks of such notice. Id. Finally, the Fund argued that no “substantial” prejudice would result in vacating the default because there was no indication of extraordinary hardship, or that any evidence or witnesses would be unavailable, and that mere added expense and delay of proceeding on the merits are

insufficient to establish “substantial” prejudice such that the ultimate sanction of default judgment is warranted, instead of some lesser sanction. Id.

Langston opposed the Fund’s Motion to Vacate. See (Respondent’s Memorandum of Law in Opposition to Motion to Vacate and for Leave to File an Answer (“Respondent’s Memo.”) pp. 7-19; R.App. 010). Langston argued that the State Court had concurrent subject matter jurisdiction with the Federal Courts over the determination of whether a DRO is qualified because she alleged that she sought benefits due to her under the terms of the Plan, to enforce her rights under the terms of the plan, and to clarify her rights to future benefits under the plan. Id. With regard to the factors to be considered on a Motion to Vacate, Langston conceded the due diligence factor to the Fund, but she argued that none of the other factors weighed in favor of the Fund. Id. Langston argued that the Fund’s excuse for failing to file an answer was weak. Id. Langston further argued that the Fund could not present any reasonable defense on the merits because her right to benefits accrued at the time the J & D was entered in 1993, and as such, Gary Langston’s retirement, the vesting of benefits in Gary Langston and James, and Gary Langston’s death, could not alter her right to those benefits. Id. Instead, Langston argued that the DRO was simply a mechanism to enforce her already-accrued rights. Id. Finally, Langston argued that she would be prejudiced if the default were vacated because she had counted on the benefit payments for many years. Id.

A hearing on the Fund’s Motion to Vacate was held on June 18, 2007 before Judge Hall. (Order p. 1; A.App. A0048-0072). In an Order and Memorandum dated August 22, 2007, Judge Hall denied the Fund’s Motion to Vacate. Id. Ignoring the Department

of Labor, the Sixth Circuit Court of Appeals, and an unpublished decision of the Minnesota Court of Appeals that were cited by the Fund, and instead relying on two California State Court cases and two Federal District Court cases outside this jurisdiction, none of which were cited by Langston but rather were acknowledged in good-faith by the Fund, Judge Hall determined that, although Langston sought an Order declaring the DRO “qualified” and never mentioned any provision of the SPD or Plan Document in her Complaint or argument, Langston’s claim was really one for benefits due to her under the terms of the plan, to enforce her rights under the terms of the plan, and to clarify her rights to future benefits under the plan, and accordingly the State Court had concurrent subject matter jurisdiction. (Memorandum pp. 8-14. A.App. 140-146).

With regard to the factors to be considered by the Court on a Motion to Vacate, like Langston, Judge Hall conceded that the due diligence factor weighed in favor of the Fund. (Memorandum p. 21; A.App. 0048). Judge Hall also agreed with Langston that the Fund did not present a reasonable defense on the merits because Langston’s interest in Gary Langston’s pension was created at the time the J & D was entered, so the fact that Gary Langston’s benefits were already in pay status and that certain benefits had already vested in James when the DRO was finally issued does not affect Langston’s right to compel the benefits from the Fund. Id. at pp. 14-19; A.App. 0048. In so holding, Judge Hall relied on two Federal District Court cases from the Ninth Circuit Court of Appeals. Id. Judge Hall did not discredit or discuss the greater weight of authority cited by the Fund which stands for the exact opposite proposition. Id. Judge Hall further agreed with Langston by finding that the Fund’s excuse for failing to timely file an Answer was weak

and that the Fund did not present a legitimate excuse for its error. Id. at 21. Finally, Judge Hall agreed with Langston that Langston would be “substantially” prejudiced if the default was vacated because she previously determined that Langston has an interest in Gary Langston’s pension and there is no reason to further delay payments to her. Id. at 22.

Judge Hall also commented at length that Langston is not without culpability. (Memorandum pp. 17; A. App. 0048). Specifically, Judge Hall noted that Langston “clearly had a responsibility to get a proposed QDRO to the Plan for the Plan Administrator’s qualification in a timely fashion, and the fact that [Langston] waited over 12 years to obtain a QDRO cannot be completely disregarded.” Id. Judge Hall further noted that “had [Langston] timely sent a proposed QDRO to the Plan, she would not be facing the issues present in the instant action. Had she properly responded to the Plan when it initially rejected her QDRO, Mr. Langston would have been alive to help correct the beneficiary designation.” Id. Likewise, Judge Hall chastised Gary Langston for failing to comply with the terms of the J & D by naming Langston, not James as his beneficiary. Id. Ultimately Judge Hall ordered the Fund to commence benefit payments to Langston effective as of the date of the Default Judgment on April 18, 2007. (Order, p. 1. A.App. 0048). On October 22, 2007, the Fund filed a Notice of Appeal to the Court of Appeals. See (Notice of Appeal; A.App. A0073-A0074).

STANDARD OF REVIEW

Whether a state court enjoys subject matter jurisdiction is a question of law and will be reviewed *de novo* by this court. Bode v. Minnesota Department of Natural Resources, 612 N.W.2d 862, 866 (Minn. 2000). When engaging in a *de novo* review of a lower court's ruling upon a legal issue, this court need not give deference to the court's decision. Frost-Benco Electrical Association v. Minnesota Public Utilities Commission, 358 N.W.2d 639, 642 (Minn. 1984). If the lower court was without subject matter jurisdiction of the underlying dispute, the motion to vacate a default judgment under Rule 60.02(d) must be granted as a matter of law. Hengel v. Hyatt, 252 N.W.2d 105, 106 (Minn. 1977).

SUMMARY OF THE ARGUMENT

The Employee Income Security Act of 1974, as amended, sets forth a comprehensive system of federal regulation of private employee benefit plans, and establishes a complex enforcement system vested primarily in the federal courts. The plain language of the statute, 29 U.S.C. §1132(a)-(e), does not provide Langston with a remedy under 29 U.S.C. § 1132(a)(1)(B), therefore this court lacks subject matter jurisdiction to consider this action. Langston may obtain relief via the plan administrator, and available internal remedies under plan, and may also obtain amendments to the DRO in state court. The plain language of 29 U.S.C. §1056(d) and 29 U.S.C. § 1132(a) do not provide the basis for concluding that state courts enjoy concurrent jurisdiction with

federal courts over the question of whether a domestic relations order is “qualified” for purposes of ERISA—a question which requires the interpretation and application of federal common law. The Minnesota Court of Appeals correctly concluded that the ruling of the trial court contradicted the plain language of ERISA and regulations issued by the Department of Labor and reversed the same.

ARGUMENT

I. THE MINNESOTA COURT OF APPEALS CORRECTLY RULED THAT FEDERAL DISTRICT COURTS ARE VESTED WITH EXCLUSIVE JURISDICTION OVER THE QUESTION OF WHETHER A DOMESTIC RELATIONS ORDER IS “QUALIFIED” AS DEFINED BY 29 U.S.C. § 1056(d) (ERISA § 206).

Benefits provided by an ERISA plan may not be “assigned or alienated” by a domestic relations order (DRO) unless the DRO is “determined to be a qualified domestic relations order.” 29 U.S.C. §1056(d)(1)-(3)(A); ERISA § 206(d); *See* Respondent’s Appendix (hereinafter “R. App.”) 175. Pursuant to ERISA, a “qualified domestic relations order” (QDRO) is a domestic relations order “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.” 29 U.S.C. §1056 (d)(3)(B)(i); R.App. 175, p. 2. In addition, for a DRO to be “qualified,” a number of additional requirements listed in 29 U.S.C. § 1056(d)(3) must be fulfilled, including but not limited to the following:

- (i) the order must clearly specify the name of the participant, late known mailing address, the name of the alternate payee, the number of payments or period to which the order applies and the amount or percentage of the participant’s benefits to be paid to the alternate payee;

- (ii) the order may not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan;
- (iii) the order may not require the plan to provide increased benefits (using actuarial values); and
- (iv) the order may not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

29 U.S.C. § 1056(d)(3)(C)-(D); R. App. 175, p.2. ERISA directs plan administrators to determine whether the DRO is “a qualified domestic relations order” and to notify the participant and each alternate payee. 29 U.S.C. § 1056(d)(3)(G)(ii); Id. The statute also requires that pension plans “establish reasonable procedures” for determining the status of DROs, i.e. to establish procedures for the plan to determine whether a DRO is “qualified.” 29 U.S.C. §1056(d)(3)(G)(ii); Id.

In the proceedings below, Langston filed a Complaint in Anoka County District Court alleging:

Defendants’ refusal to remit survivor benefits to Plaintiff violates the Employee Retirement Income Security Act (“ERISA”), and by reason of the foregoing, Plaintiff is entitled to judgment against Defendants for retroactive and ongoing survivor benefits, plus interest, and reasonable attorneys’ fees and costs, and a declaration that Plaintiff is entitled to benefits under the Plan.

R. App. 001-003. Langston also sought a declaratory judgment that the 2005 Anoka County District Court Order was a QDRO, and that the plan administrator and plan were “obligated to remit pension benefit payments (including survivor benefits) to her in accordance with the 1993 Judgment and Decree and 2005 QDRO.” Id. The Minnesota

Court of Appeals determined that state courts do not have jurisdiction to decide whether DROS are QDROS for purposes of 29 U.S.C. § 1056(d)(3). See (Appellant's Addendum, pp. 1-18).

A. Langston's Complaint States a Claim for Relief Available Only Under 29 U.S.C. §1132(a)(3), Which Falls Within the Exclusive Jurisdiction of the Federal District Courts.

ERISA was enacted to "protect . . . the interests of participants in employee benefit plans and their beneficiaries" by issuing requirements and a regulatory scheme under which employee benefit plans operate, and to "provide for appropriate remedies, sanctions, and ready access to the Federal courts." 29 U.S.C. § 1001(b); Aetna Health, Inc. vs. Davila, 542 U.S. 200, 208, 124 S.Ct. 2488, 2495 (2004). "The purpose of ERISA is to provide a uniform regulatory regime over employee benefit plans." Id. Accordingly, ERISA includes broad preemption provisions "intended to ensure that employee benefit plan regulation would be exclusively a federal concern," and specifically deposits jurisdiction over most claims available under its enforcement mechanism with the federal courts. Id. citing Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504, 523, 101 S.Ct. 1985 (1981); See also 29 U.S.C. § 1144; ERISA § 514; 29 U.S.C. § 1132(a); ERISA § 502(a).

ERISA's civil enforcement clause, Section 502(a), provides for different claims to be brought by participants, beneficiaries, the Secretary for the Department of Labor, and/or plan fiduciaries. 29 U.S.C. § 1132(a)(1)-(8), ERISA § 502(a)(1)-(8). The United States Supreme Court has repeatedly recognized that §502(a) "is a distinctive feature of ERISA, and essential to accomplish Congress' purpose of creating a comprehensive statute of the regulation of employee benefit plans." Pilot Life Ins. Co. v. Dedeaux, 481

U.S. 41, 54, 107 S.Ct. 1549 (1987); See also Mertens v. Hewitt Associates, 508 U.S. 248, 251, 113 S.Ct. 2063 (1993)(recognizing that ERISA was the product of a decade long congressional study of the Nation's private employee benefit system). To that end, ERISA's "integrated civil enforcement provisions found in § 502(a) . . . provide strong evidence that Congress did not intend to authorize other remedies it simply forgot to incorporate expressly." Id. at 54, 107 S.Ct. 1549 (quoting Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134, 147, 105 S.Ct. 3085 (1985)). As a result, federal courts are careful not to provide for remedies not specifically authorized by the text of the statute. Russell, 473 U.S. 134, 146-147, 105 S.Ct. 3085 (1985).

ERISA Section 502(a)(1)(B) provides that a "civil action may be brought, (1) by a participant or beneficiary- (B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B)(Emphasis added). ERISA Section 502(a)(2) provides for claims to be brought for an alleged breach of fiduciary duty under ERISA § 409, and Section § 1132 (a)(3) provides that:

a civil action may be brought by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan.

29 U.S.C. § 1132(a). Pursuant to the jurisdictional clause, district courts of the United States "shall have exclusive jurisdiction of civil actions under this title brought by a participant, beneficiary, fiduciary," except for actions brought under subsection (a)(1)(B). See 29 U.S.C. § 1132(e)(1); ERISA § 502(e)(1). Section 1132(a)(1)(B) is the only portal

through which a plaintiff can assert a claim under ERISA in state court. Langston asserts that her cause of action was brought under 29 U.S.C. §1132(a)(1)(B), and therefore Minnesota courts have concurrent jurisdiction to entertain whether the DRO is a QDRO under ERISA § 1056.

Langston's argument is misplaced for two reasons. First, although she attempts to mask her claim as one for benefits due "under the plan" Langston's Complaint does not state a claim for wrongful denial of benefits in contravention of the provisions of the plan document, nor for relief that can be awarded pursuant to the terms of the plan. See (Complaint; R.App. 1-3). Her claim seeks injunctive relief in the form of an order determining the DRO is "qualified." Second, her claim directly contradicts the unambiguous text of the statute. 29 U.S.C. § 1132(a)(1)(B) requires a plaintiff to assert that benefits are due to him or her under the terms of the plan, or to enforce and/or clarify rights they are entitled to under the terms of a plan. Langston instead seeks an Order declaring that the DRO entered in Anoka County District Court is "qualified" under ERISA §1056 and alleges the Plan and Wilson-McShane are acting in contravention of ERISA. Id. Langton seeks interpretation of the DRO and the application of §1056(d)(3) of ERISA, not an application of the terms of the plan. Accordingly, Langston's claim does not fall under 29 U.S.C. § 1132(a)(1)(B).

As noted above, the plain language of ERISA does not contemplate jurisdiction for Langston's claim. The underlying action filed by Langston requests that the Anoka County District Court decide whether the DRO, not the terms of the SPD or Plan Document, complies with 29 U.S.C. § 1056 to be "qualified," and only as such, entitles

her to benefits under the terms of the SPD and Plan Document. Langston's argument places the proverbial cart before the horse. The conclusion that the DRO is "qualified" is a condition precedent to asserting a claim for benefits due under the plan. ERISA § 1056(d)(3)(J) defines who may be considered a "beneficiary" under the plan as "an alternate payee under a qualified domestic relations order." 29 U.S.C. § 1056(d)(3)(J)(Emphasis added). An alternate payee is any "spouse, former spouse, child or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable." *Id.* The statute expressly designates that the plan administrator will determine whether a DRO is "qualified." In this case, the Plan determined the DRO was not "qualified," and provided a list of reasons to Langston which could have addressed by simply requesting an amended DRO from Anoka County District Court. Instead, Langston sued the Fund and the plan administrator.

Neither party disputes that the Plan determined the DRO was not "qualified." Since the DRO was not "qualified" Langston is not a "beneficiary" as defined under 29 U.S.C. § 1056(d)(3)(J) and has no available claim under 29 U.S.C. § 1132(a)(1)(B) for relief pursuant to the plan. Congress specifically limited the class of potential plaintiffs able to assert §1132(a)(1)(B) claims to participants and beneficiaries. Although Langston heavily relies upon the amendments to 29 U.S.C. § 1056, set forth in 1984 by the Retirement Equity Act (REA), those amendments specifically exclude Langston from the class of plaintiffs who may assert claims under §1132(a)(1)(B) claim because the

unambiguous text of the statute defines a beneficiary as an alternate payee named in a domestic relations order already deemed to be “qualified.” See 29 U.S.C. § 1056(d)(3)(J).

The Minnesota Court of Appeals correctly concluded, albeit on other grounds, that the language of ERISA requires a more narrow reading of §502(a)(1)(B). Langston’s argument, if accepted, would invalidate 29 U.S.C. § 1056(d)(3)(J), which specifically provides that Langston is not a beneficiary until designated as one by the plan administrator. Similarly, ERISA §1002(8) also defines “beneficiary” to be a “person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit thereunder.” In this case, Langston could have been designated by Gary Langston as someone entitled to benefits under his pension but failed to obtain a QDRO during Gary Langston’s lifetime or prior to his retirement. See Hopkins v. AT&T Global Information Solution Company, 105 F.3d 153 (4th Cir. 1997)(holding that order obtained by former spouse after participant’s retirement did not relate to a benefit payable under the plan because benefits had already vested in the current spouse therefore DRO not “qualified”). Application of the plain language of ERISA requires the conclusion that Langston is not an alternate payee in a “qualified” domestic relations order, therefore she is not a beneficiary under the plan and has no available claim under § 1132(a)(1)(B). As a result, 29 U.S.C. § 1132(e) is not the appropriate vehicle, given the facts of this case, to confer jurisdiction to Minnesota state courts to consider whether a DRO is qualified for purposes of ERISA.

B. Appellant’s Arguments Ignore ERISA’s Statutory Framework.

Langston argues that because 29 U.S.C. §1056(d)(3)(H)(i) states the following, Congress clearly intended to give state courts concurrent jurisdiction:

During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall separately account for the amounts . . . which would have been payable to the alternate payee . . .

29 U.S.C. § 1056 (d)(3)(H)(i). This reference is hardly the beacon of clarity, but Langston, and other courts which have interpreted this provision to be “unnecessary” if applicable to only federal courts, overstate the importance of this language. This reference can reasonably be read to refer generally to § 1132(e) in that it states the obvious, i.e. that the determination of whether a DRO is a QDRO may be made by a court of competent jurisdiction. However this language does not mirror 29 U.S.C. § 1132(e). Section 1132(e) provides that §1132(a)(1)(B) concurrent jurisdiction claims may be heard by “state courts of competent jurisdiction and federal district courts.” If the language of §1056(d)(3)(H)(i) were intended to be the grant of jurisdictional power to state courts, the broad use of the term “courts of competent jurisdiction” would not have been appropriate, given the well known presumption of federal preemption and federal regulation of ERISA plans. Section 1056(d)(3) should be viewed to be nothing more than a reference back to §1132(e)-which currently does not grant state courts jurisdiction over enforcement of the terms of an ERISA plan, nor over the application or enforcement of the terms or ERISA, those claims are §1132(a)(3) claims and are within the exclusive jurisdiction of the federal district courts.

It is significant that this case does not involve the enforcement of the plan's terms, and that the ultimate relief sought by Langston, via the Anoka County District Court, would be require application of ERISA §1056(d)(3) and injunctive relief regarding the same. The Eighth, Third, Fourth, Fifth and Sixth Circuit Courts of Appeal all concur with this analysis. In the Eighth Circuit, the determination of whether a DRO constitutes a QDRO for plan purposes is held not to require an interpretation of the plan's terms. Hogan v. Raytheon Co., 302 F.3rd 854, 856 (8th Cir. 2002). Similarly, where a party challenges a plan administrator's determination that a DRO is not "qualified," the issue in the case is held to be a question of statutory construction regarding the requisites of a QDRO rather than a question of interpretation of the plan. Samaroo v. Samaroo, 193 F.3d 185, 189 (3rd Cir. 1999). See also Hopkins v. AT & T Global Information Solutions, Co., 105 F.3d 153, 155 (4th Cir. 1997)(where a plaintiff challenges an administrator's determination that a DRO is not "qualified," the only inquiry is whether the provisions of ERISA were interpreted correctly); Dial v. NFL Player Supplemental Disability Plan, 174 F.3d 606, 611 (5th Cir. 1999)(in determining whether a property settlement agreement constitutes a QDRO, the plan administrator made no factual determination nor interpreted the terms of the Plan.); Rouse v. Daimler Chrysler Corporation UAW, 300 F.3d 711, 716 (6th Cir. 2002)(where the issue is whether a DRO creates any obligations under ERISA, and the review does not require the court to meddle in state domestic relations law or policy, the issue is strictly federal in nature.)

As indicated in the record, the Fund determined the DRO was not qualified because it required the Fund to provide a type or form of benefit not otherwise provided

by the terms of the plan and required the Fund to provide increased benefits in violation of 29 U.S.C. § 1056(d)(3)(D); (R.App. 27-28). Accordingly, Langston's claim clearly implicates the Fund's interpretation of ERISA, and does not allege a violation of a term of the SPD or Plan Document. Accordingly, it necessarily arises under 29 U.S.C. § 1132(a)(3) and the trial court was without subject matter jurisdiction to enter the Default Judgment.

C. The Authority Cited By Appellants Renders ERISA's Text Meaningless and Contradicts Department of Labor Regulations

Langston contends that the decision of the Court of Appeals, if upheld, will have the undesirable result of forcing divorce litigants to seek redress in two different forums (state divorce courts and federal district courts) and will burden the federal courts with divorce litigation. Langston's argument is based upon a misreading of 29 U.S.C. §1056, misapprehends the purpose of ERISA, and ignores the remedies available to former spouses or alternate payees.

The current statutory scheme provides that upon noticed of a DRO a pension plan administrator "shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination." 29 U.S.C. § 1056(d)(3)(G)(ii). A "domestic relations order" is any "judgment, decree, or order" relating to marital property rights owed to a spouse or former spouse. 29 U.S.C. § 1056(3)(B)(ii). Pension plans are required by the statute to set written procedures into effect to use when determining the qualified status of DROS. 29 U.S.C. § 1056(3)(G)(ii). After a DRO is deemed "qualified," an alternate payee may seek redress under

502(a)(1)(B) as a beneficiary of the plan. Langston will argue that individuals will be without remedies if a plan administrator determines the DRO is not “qualified” if they are not able to sue under 502(a)(1)(B).

There are, however, remedies available under the terms of the Plan for individuals aggrieved by a plan administrator’s determination. (Trust Document; p. 29, R. App., 238-240). First, alternate payees may seek determination from the plan administrator that a DRO is a QDRO. If denied, they can exhaust any administrative remedies available under the plan. In this case, the claim appeal provisions are broad enough to have included Langston (as a person with a controversy with the trust fund), and she could have requested arbitration of her claim using this procedure. See (Plan Document, pp. 52-54, R. App. 168-172; Trust Agreement, pp. 29-30; R. App. 238; R. App. 247). It is well recognized that the QDRO provisions of ERISA are “part of the statute’s mandatory participation and vesting requirements” and “provide detailed protections to spouses of plan participants which, in some cases, exceed what their rights would be were community property law the sole measure.” Boggs v. Boggs, 520 U.S. 833, 841, 117 S.Ct.1754, 1760-61 (1997). Accordingly, interpretation of the plan provisions and application of the same to a DRO is vested with the plan administrator. Alternate payees may need to seek a determination from the plan administrator and return to state court to obtain an amended order from the court presiding over the divorce proceedings. This procedure is noncontroversial. However, allowing state divorce courts to interpret and apply 29 U.S.C. § 1056, and the vesting and participation requirements of a pension plan,

is at odds with ERISA's mandate that 502(a)(3) claims be addressed to the federal district courts.

Second, allowing state divorce courts to interpret the provisions of private employee benefit plans and to develop a common law as to the application of 29 U.S.C. § 1056 is also inconsistent with the very purpose and intent behind ERISA's enactment. The development of federal common law interpreting ERISA should be a strictly federal concern, and the interpretation of ERISA and its interplay with the terms of a particular pension plan, or a Section 502(a)(3) claim, has been expressly designated to be exclusively federal. Requiring individuals to exhaust all administrative or otherwise available remedies is also consistent with the statutory framework of ERISA. The mere fact that a participant's current or former spouse may need to return to divorce court and obtain amendments to a DRO after consideration of the DRO by the plan administrator, will not necessarily result in protracted litigation, nor application of divorce law by the federal courts.

The Minnesota Court of Appeals and the Department of Labor are in agreement as to this issue. In Welter v. Welter, 2004 WL 2163149 * 3 (Minn.App. 2004) (unpublished) the Minnesota Court of Appeals determined that whether a DRO is a QDRO is a matter relevant to ERISA, determinable by the plan administrator, and reviewable only by a Federal Court. See (R.App. 187-188). The United States Department of Labor takes the same position: "a state court does not have jurisdiction to determine whether an issued domestic relations order constitutes a 'qualified domestic relations order'; jurisdiction to challenge a plan administrator's decision about the

qualified status of an order lies exclusively in Federal Court.” U.S. Department of Labor, The Division of Pensions Through Qualified Domestic Relations Order, p. 5. R.App. 189. When enacting 29 U.S.C. § 1132, Congress explicitly authorized the Secretary of Labor to promulgate regulations relating to the interpretation of 29 U.S.C. § 1132. See 29 U.S.C. § 1132; R. App. 189-209. Accordingly, the Department of Labor’s interpretations of the statute are persuasive authority.

Finally, in enacting ERISA, Congress intended that for any action involving title I of ERISA, which includes §§ 1056 and 1132, Federal Courts would have exclusive jurisdiction. A Congressional Conference Committee Report specifically addressing federal and state jurisdiction under ERISA provides that:

Civil actions may be brought by a participant or beneficiary to recover benefits due under the plan, to clarify rights to receive future benefits under the plan, and for relief from breach of fiduciary responsibility. The U.S. district courts are to have exclusive jurisdiction with respect to actions involving breach of fiduciary responsibility as well as exclusive jurisdiction over other actions to enforce or clarify benefit rights provided under title I, [now codified at 29 U.S.C. 1021-1114]. However, with respect to suits to enforce benefits under the plan or to recover benefits under the plan which do not involve application of title I provisions, they may be brought not only in U.S. district courts, but also in state courts of competent jurisdiction.

H.R.Conf.Rep. No. 12280, 93rd Cong., 2d Sess. (1974), reprinted in 1974 U.S.Code Cong. & Ad. News 5038, 5107.

Langston’s position ignores that the relief she seeks requested is more appropriately considered a claim brought under ERISA §502(a)(3). Langston’s Complaint is silent on the issue of jurisdiction. See generally Complaint A.App. 1-3. Langston does not specify under which part of 29 U.S.C. § 1132 her claim arises. Id.

And it does not allege a violation of a term of the SPD or Plan Document or a violation of the calculation of benefits by the Fund. Id. The cases cited to by Langston are either inapposite or fail to appropriately consider the language of the statute. See In re Marriage of Levingston, 12 Cal.App.4th 1303, 1305 (Cal. Ct. App. 1993) (“Levingston I”) and Board of Trustees of Laborers Trust Fund for Northern California v. Clewon Levingston, 816 F.Supp. 1496 (N.D. Cal. 1993) (“Levingston II”). Neither one of these cases are controlling or binding precedent on this Court. While both Courts in Levingston I and Levingston II determined that state and federal courts have concurrent jurisdiction over the determination of whether a DRO is “qualified” under ERISA, these decisions suffer from the same errors as the decision of the trial court in this case and conflict with the plain text of the statute.

Neither opinion referenced above reviews the relief sought in the Complaint or other initiating document to determine under what portion of 29 U.S.C. § 1132 the action arises. Additionally, these Courts ignored all contrary authority with the exception of the Conference Committee Report for § 1132. Second, the cases ignore the plain text of ERISA and decades old Supreme Court precedent stating that courts should avoid reading relief into the statute not specifically enumerated by Congress. Notably, the Levingston II Court admitted that ERISA’s legislative history was contrary to its holding, but determined that despite such text of the Conference Committee Report, Congress actually intended State and Federal courts to have concurrent jurisdiction in determining whether a DRO is “qualified.” Levingston, 816 F.Supp. 1496 at 1499-1501.

Langston's reliance on In re Marriage of Oddino, 16 Cal. 4th 67, 936 P.2d 1266 (Cal.1997) and Jones v. American Airlines, Inc., 57 F.Supp.2d 1224 (D.Wyo. 1999), is similarly misplaced because Oddino and Jones are distinguishable. In both cases, the pension plan administrators had determined that the DRO at issue was "qualified" under ERISA. Therefore, the plaintiffs would have been "beneficiaries" under the plan with relief available under 29 U.S.C. § 1132(a)(1)(b) and the disputes alleged only concerned the resulting administrative calculation of benefits by the pension plans. Oddino, 16 Cal. 4th at 74 936 P.2d at 1270 and Jones, 57 F.Supp.2d at 1230.

In Oddino, a former spouse of a plan participant filed suit against the plan when the plan refused to include an 'early retirement subsidy' in the calculation of amounts to be paid to the former spouse, which resulted in actuarially reduced payments to the former spouse. Oddino, 16 Cal. 4th at 74 936 P.2d at 1270. Similarly, in Jones, the plan participant filed suit against the plan, in Federal Court, alleging that the plan misapplied the terms of the QDRO when it divided and distributed the benefits to the participant's former wife, which resulted in greater benefits being paid to his former wife than what was provided for in the QDRO, which in turn resulted in reduced benefits being paid to the participant. Jones, 57 F.Supp.2d at 1230. Unlike this case, the plaintiffs in Oddino and Jones both expressly alleged that their claims arose under 29 U.S.C. § 1132(a)(1)(B) because they were seeking benefits due to them under the terms of the plan and not an order declaring a DRO "qualified." The courts deciding both Jones and Oddino also missed the fact that 29 U.S.C. § 1056(3)(J) specifically exempts alternate payees from being considered beneficiaries of a plan until the DRO is "qualified." Therefore allowing

the plaintiffs to assert claims in state court under 29 U.S.C. §1132(a)(1)(B) as beneficiaries directly contradicts the statute.

In this case, Langston's Complaint sought a ruling that the plan administrator and plan were acting in violation of 29 U.S.C. § 1056 and sought redress for such violations. The plain language of 29 U.S.C. §1132(e) provides that this claim, or the attempt to force a state court to determine whether a domestic relations order is "qualified," falls within the ambit of the exclusive jurisdiction of the federal district courts. Accordingly, the lower appellate court correctly ruled that the trial court lacked subject matter jurisdiction to determine whether the DRO was qualified as that term is defined by ERISA § 206.

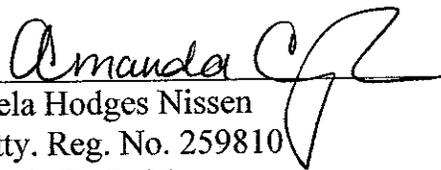
CONCLUSION

As discussed in detail above, the Fund respectfully requests that this Court affirm the Court of Appeals and hold that federal courts are vested with the exclusive jurisdiction to determine whether a domestic relations order is “qualified” under the terms of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”).

Respectfully submitted,

Date: May 27, 2009.

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