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## Recent Developments: Matthews v. Matthews: Maryland Courts Have the Authority to Order a Party to Maintain a Former Spouse as the Beneficiary of His or Her Survivor Benefit Plan

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*Matthews v. Matthews:*

**MARYLAND  
COURTS HAVE  
THE AUTHORITY  
TO ORDER A  
PARTY TO  
MAINTAIN A  
FORMER  
SPOUSE AS THE  
BENEFICIARY  
OF HIS OR HER  
SURVIVOR  
BENEFIT PLAN.**

Congress granted Maryland courts the authority to order a party to maintain a former spouse as the beneficiary of his or her Survivor Benefit Plan. In *Matthews v. Matthews*, 336 Md. 241, 647 A.2d 812 (1994), the Court of Appeals of Maryland held that it was the intent of Congress to allow state courts to compel military service members to elect or not elect certain persons as beneficiaries of their Survivor Benefit Plan. In so holding, the court used legislative history and statutory interpretation to reach its conclusion.

Admiral Herbert Matthews, Appellee, served in the Navy for 31 years. Two years prior to his retirement from the Navy, Adm. Matthews married Jacqueline Matthews, Appellant, and designated her as the beneficiary of his Survivor Benefit Plan ("SBP"). After twenty-one years of marriage, Adm. and Mrs. Matthews were granted an absolute divorce in the Circuit Court for St. Mary's County. Following the separation of the two parties, Mrs. Matthews was removed from the SBP due to the cancellation of Adm. Matthews' participation in the plan.

The SBP, 10 U.S.C. §§ 1447-55 (1988 & Supp. I 1993), is a federal law designed to provide financial support to designated beneficiaries of active or retired military personnel. Eligible participants of the plan include any member who is entitled to retired pay and who is married or has a dependent child

at the time that the retirement occurs. In the event of the member's death, the beneficiary receives a monthly annuity.

The circuit court awarded Mrs. Matthews a monetary award of \$25,000, indefinite alimony of \$ 1,750 per month, and attorneys fees of \$9,000.00. Initially, the court also granted Mrs. Matthews' request to have Adm. Matthews secure her survival benefits by way of court order. However, in its response to both parties' motions to alter the judgment, the circuit court held, in a revised order, that it lacked authority to compel Adm. Matthews to retain Mrs. Matthews as a beneficiary of the SBP. The court reasoned that the benefits which accrued prior to the marriage could not be considered marital property. Furthermore, because the SBP is considered a form of life insurance, any order granting Mrs. Matthews' request would violate section 371 of the Maryland Insurance Code, which prohibits forcing an individual to permit an ex-spouse to obtain a life insurance policy.

Mrs. Matthews appealed to the Court of Special Appeals of Maryland. The Court of Appeals of Maryland granted certiorari prior to the court of special appeals' review. The court focused on whether the 1986 Amendment to the SBP confers authority upon Maryland courts to require a party to maintain a former spouse as the beneficiary of the SBP, or whether the Maryland General Assembly must enact legislation to

complement the SBP Amendment before Maryland courts may affect the military survivor benefits.

The Court first addressed Adm. Matthews' argument that absent enabling legislation, Maryland courts are without authority to order service members to elect to provide an annuity to a former spouse under the SBP. *Matthews*, 336 Md. at 246, 647 A.2d at 814 (1994). The court began its analysis by first looking to the legislative history of 10 U.S.C. § 1450 (f)(4), which lays out the guidelines and requirements of the SBP. *Id.* at 244, 647 A.2d at 814. When first enacted in 1972, the SBP did not expressly provide that a former spouse was an eligible beneficiary. *Id.* at 245, 647 A.2d at 813. However, the court recognized limited situations in which a former spouse could retain an insurable interest in a former husband or wife, such as providing a measure of financial security upon divorce. *Id.* Consequently, Congress amended the SBP in 1982 to expressly authorize members to elect a former spouse as a beneficiary of the SBP. *Id.*, 647 A.2d at 814. Absent from the 1982 amendment, however, was the courts' authority to order a person to elect a former spouse as a beneficiary without a written, voluntary agreement by the electing party. *Id.*

In 1986, Congress replaced the provision requiring a voluntary written agreement with a provision authorizing a

court to require a person "to elect or to enter an agreement to elect . . . under § 1448 (b) of the title to provide an annuity to a former spouse . . ." 10 U.S.C. § 1450 (f)(4). In light of the 1986 amendment, the court agreed with Mrs. Matthews and held that state courts are expressly authorized to compel service members to elect or not elect certain persons as beneficiaries of their SBP's. *Id.* at 246, 647 A.2d at 815.

In the court's interpretation of the statute, it found support from case law of other jurisdictions which gave the statute the same meaning and recognized the state's authority to award survivor benefits for former spouses. *Id.* at 247, 647 A.2d at 815. In each case, the court found that 10 U.S.C. § 1450 (f)(4), standing alone, served as the basis for the various courts' decisions. *Id.* at 248, 647 A.2d at 815. In addition, none of the reported cases identified enabling legislation in support of their finding or required that such legislature be created to give affect to U.S.C. § 1450 (f)(4). *Id.* The court relied on *State v. Siegel*, 266 Md. 256, 292 A.2d 86 (1972), to conclude that when Congress intends to require state enabling legislation to become effective within a state, it will expressly provide such an interpretation within the statutory scheme. *Id.* at 249, 647 A.2d at 816. The court found that in this case, no such express requirement existed under the SBP. *Id.*

Next, the court turned

to Adm. Matthews' contention that the SBP is a form of life insurance and, therefore, under the Maryland Insurance Code the court is precluded from ordering the election of a former spouse as the beneficiary of the SBP. *Id.* at 250, 647 A.2d at 816. In addressing this argument, the court looked to Maryland's definition of life insurance as set out in Section 63 (2) of the Insurance Code. *Id.* at 251, 647 A.2d at 817. Under this section, life insurance is defined as "insurance on human lives." *Id.* The court then looked to the definition of annuities. According to Md. Ann. Code art. 48, § 65 (1957, 1994 Repl. Vol.), annuities are defined as "all agreements to make periodical payments where the making or continuance of all or some of a series of such payments, or the amount of any such payment is dependent upon the continuance of human life, *except payments made under the authority of Section 63* [Definition of Life Insurance]." *Id.* (emphasis added). Thus, the court found that annuities are expressly excluded from the definition of life insurance under the Insurance Code. *Id.* at 252, 647 A.2d at 817.

The court again looked to case law in other jurisdictions to support its conclusion. *Id.* In each case, the courts likened the SBP to insurance, but nevertheless, held that the SBP is not considered to be life insurance. *Id.* The court, therefore, concluded that the SBP is not life insurance within the meaning of

Section 371 of the Insurance Code. *Id.*

Finally, the court addressed the trial court's error in not granting Mrs. Matthews' request to be maintained on Adm. Matthews' SBP, based on the characterization of the SBP as non-marital property. *Id.* Mrs. Matthews argued that marriage during a substantial period of active duty is not a prerequisite to the award of benefits under the SBP. *Id.* Admiral Matthews, on the other hand, alleged that the SBP, which was derived prior to his marriage, is not subject to equitable distribution, as marital property. *Id.*

Again, the court agreed with Mrs. Matthews, but first

determined that the power of the court to order a party to elect a former spouse as a beneficiary of the SBP does not involve the transfer of property. *Id.* at 253, 647 A.2d at 817. The court then recognized other court holdings which characterized the SBP as a separate and distinct property interest. *Id.*, 647 A.2d at 818. In its conclusion, the court stated that its holding does not require the court to characterize the nature of the interest involved in the case. *Id.* It reasoned that, while property gets its form from the federal statute, a property right is subject to "all conditions of the statute which created it." *Id.* In this case, the condition was the power of the state court

to order a service member to designate a beneficiary. *Id.*

*Matthews v. Matthews* interprets 10 U.S.C. § 1450 (f)(4) as authorizing Maryland courts to compel military servicemembers to maintain former spouses as beneficiaries of their Survivor Benefit Plan. The case is significant in that it grants state courts additional power in the area of family law which may be exercised during divorce proceedings. The case also recognizes those unusual circumstances in which a former spouse may be in need of a measure of financial security that would not otherwise exist but for the Survivor Benefit Plan.

- Andrea E. Moss

### *Powell v. Maryland Aviation Admin.:*

#### ***COURT'S FINDING OF GUILT IN CRIMINAL CASE MAY BE USED IN STATE ADMINISTRATIVE HEARING AS EVIDENCE OF MISCONDUCT, BUT MAY NOT BE GIVEN CONCLUSIVE EFFECT.***

In *Powell v. Maryland Aviation Admin.*, 336 Md. 210, 647 A.2d 437 (1994), the Court of Appeals of Maryland determined that an administrative agency hearing on employee misconduct may use a trial court's finding of the individual's guilt as evidence of the misconduct. The criminal finding may not, however, be given conclusive effect in such proceedings.

A maintenance worker at Martin State Airport, David Powell ("Powell"), was suspended for threatening a supervisor. At one of his hearings, Powell learned that a secretary, Colleen Holthaus ("Holthaus"),

had provided information used in the case against him. Following the hearing, Holthaus received obscene and harassing telephone calls which were recorded on her answering machine. She believed the voice was Powell's and, subsequently, the calls were traced back to an area of Martin State Airport to which he had access. Holthaus filed a complaint against Powell in the Circuit Court for Harford County. He was charged and found guilty of telephone misuse in violation of Article 27, Section 555A of the Annotated Code of Maryland (1957, 1992 Repl. Vol.). At sentencing, Powell was granted