UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

MARK E. YAEGER and
NANCY J. YAEGER,

BKY 97-48484

Debtors.

MEMORANDUM ORDER

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At Minneapolis, Minnesota, June 26, 1998.

The above-entitled matter came on for hearing before the undersigned on an objection by the Chapter 7 Trustee to the Debtors' claim of exemption and/or exclusion of property of the estate. At the hearing and in their moving papers, the parties agreed that the only issue before the Court is whether Mark E. Yaeger's (Debtor's) right to receive pension benefits under his father's Employment and Deferred Compensation Agreement is excluded from the bankruptcy estate pursuant to 11 U.S.C. § 541(c)(2). Appearances were noted in the record.

After taking the matter under advisement, the Court makes the following:

FINDINGS OF FACT

Debtor's father was a long-time employee of the law firm of Yaeger & Yaeger, P.A. (the law firm). In spite of the similarity in names, Debtor's father was not an owner, but was rather an employee, of the law firm.[1] On January 16, 1985, Debtor's father and the law firm became parties to an Employment and Deferred

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[1] As a consequence, this case does not implicate the issues raised by "self settled trusts."

Compensation Agreement ("the agreement"). In recognition of a long employment history, the law firm agreed to employ Debtor's father for an unspecified term, to pay him a base salary which was subject to adjustment, and to pay him certain fringe benefits. From the record before me, it appears that the agreement covered only one employee of the law firm, Debtor's father, and that no other employees were offered a similar arrangement.

Paragraph 6 of the agreement provided that, in addition, Debtor's father was entitled to receive a specific sum of deferred compensation ($3,530.88) payable monthly commencing on January 1, 1992, and continuing thereafter on the first day of each succeeding month up to and including December 1, 2001. Paragraph 6 further provided that, if Debtor's father died before December 1, 2001, "death benefit" payments would be paid to his designated beneficiary or, in the absence of such a designation, to his estate. Payments were subject to forfeiture upon the following conditions: (1) a voluntary departure prior to January 1, 1989, "provided such voluntary departure is not as a result of death, disability, any breach of this Agreement by Company or any other fault on the part of the Company"; or (2) involuntary termination before January 1, 1989, if termination was based on "employee's gross violation of his duties under this Agreement after his willful failure to perform such duties and obligations

after thirty (30) days written notice thereof by Company." The payments were specifically identified as a general obligation of the company and were not to be "escrowed or otherwise set up as a separate trust fund for the payment of such obligation." The law firm retained the right, at its sole option, to put such sums as it desired into accounts with any bank or other institution to aid it in meeting its obligations, with the interest, dividends and/or gains actually earned on such funds to be used to fund the deferred compensation commitment: "but all amounts in any such account shall be the sole property of the Company and shall not be subject to attachment or other legal proceedings by or against Employee, and Company shall have the right to withdraw any sums so deposited, plus the earnings thereon, for its general corporate purposes."

Paragraph 11 of the agreement further provided:

> No Accrual of Benefits. Nothing contained in this Agreement and no action taken pursuant to the provisions of this Agreement shall create or be construed to create a trust of any kind, or a fiduciary relationship between the Company and the Employee, his designated beneficiary or any other person. Any funds which may be invested to provide for the deferred compensation payable under the provisions of this Agreement shall continue for all purposes to be part of the general funds of the Company and no person other than the Company shall by virtue of the provisions of this Agreement have any interest in such funds. To the extent that any person acquires a right to receive payments from the company under this Agreement, such right shall be no greater than the right of any unsecured general creditor of the Company.

Finally, Paragraph 12 of the agreement contained the following antialienation clause:

> Payment Not Assignable for Liabilities. Employee shall not have the right to assign, encumber or dispose of his rights to receive payments hereunder. Such payments and rights thereto are expressly declared to be nonassignable and nontransferable. In the event of any attempt at assignment or transfer, Company shall have no further liability hereunder.

Debtor's father designated Debtor as the beneficiary under the agreement in the event of the father's death. Subsequently, after his father's death, Debtor began receiving monthly payments from the law firm as provided by the agreement. On December 12, 1997, the Debtors jointly filed for relief under Chapter 7 of the United States Bankruptcy Code. On their Schedule C, Debtors listed Debtor's interest in the payments as excluded from the bankruptcy estate pursuant to 11 U.S.C. § 541(c)(2).

On February 19, 1998, the Trustee filed the present objection to the Debtors' claim that the payments are exempt or excluded from the bankruptcy estate. In support of her objection, the Trustee argues that the antialienation clause contained in the agreement does not restrict Debtor’s ability to transfer his right to receive payments under the agreement because Debtor is not a participating employee, but is rather only his father’s designated beneficiary of a "death benefit." In response to the Trustee's objection, the Debtors argue that the agreement is an "ERISA-qualified pension plan" as that term

was used in the Supreme Court's decision in Patterson v. Shumate, 504 U.S. 753, 758 (1992); that the antialienation clause contained in the agreement is enforceable under ERISA; and that Debtor's interest in payments is thus excluded from the estate under § 541(c)(2). Alternatively, the Debtors assert that Debtor's interest in the payments is excluded from the estate under § 541(c)(2) because the agreement constitutes a spendthrift trust under Minnesota state law.[2] The parties have agreed to submit the issue to me on a minimal record which includes the agreement itself and a brief affidavit from the Debtor unless the court determines, after its own research and review of the law, that an evidentiary hearing is required.

CONCLUSIONS OF LAW

Under § 541(a)(1) of the United States Bankruptcy Code, the property of a debtor's bankruptcy estate includes all legal or equitable interests of the debtor in property, wherever located or by whomever held, as of the commencement of the case. Despite this broad rule of inclusion, § 541(c)(2) provides that "[a] restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title."

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[2] The Debtors have conceded that, if the benefits are included in the estate, they cannot be exempted under Minn. Stat. § 550.37, subbed. 24. See Deretich v. City of St. Francis, 128 F.3d 1209 (8th Cir. 1997) (asset must be directly derived from *debtor's* employment to be exempt).

The issue before me is whether the payments Debtors seek to exclude are a beneficial interest of the Debtor in benefits from a trust which contains a restriction on alienation that is enforceable under applicable nonbankruptcy law.

I. SPENDTHRIFT TRUST

Section 541(c)(2) was, at a minimum, intended to exclude from a debtor's estate beneficial interests in spendthrift trusts. The Debtors argue that the agreement constitutes a spendthrift trust under Minnesota state law. This is plainly not so.

Under Minnesota law, a spendthrift trust is a trust where the grantor has restrained the beneficiary's power to alienate trust property before the property is distributed. Morrison v. Doyle, 570 N.W.2d 692, 696 (Minn. Ct. App. 1997) (citing Van Dyke v. First Nat'l Bank (In re Moulton's Estate), 233 Minn. 286, 290 (1951)). Spendthrift clauses in trusts are enforceable on the theory that the owner of property, in the free exercise of his will in disposing of it, may secure such benefits to the objects of his bounty as he sees fit and may, if he so desires, limit its benefits to persons of his choice, who part with nothing in return, to the exclusion of creditors and others. Moulton, 233 Minn. at 291. No particular form of words is necessary to create a spendthrift trust. Id. It is sufficient if by the terms of

the trust the settlor manifests an intention to impose restrictions common to such trust. Id.

The Debtors' argument under Minnesota spendthrift trust law suffers from one fundamental flaw: there was simply no intent to create a trust relationship here. Under Minnesota law, the determination of whether the agreement created a trust, or whether it acted merely to create an unsecured obligation of the Company, depends upon the manifested intention of the parties to the agreement. American Sur. Co. v. Greenwald, 223 Minn. 37, 44-45 (1946); Farmers State Bank v. Sig Ellingson & Co., 218 Minn. 411, 418 (1944); Walz v. State Bank, 211 Minn. 317, 376-77 (1942); State v. Marshall, 541 N.W.2d 330, 332 (Minn. Ct. App. 1995). To create a trust, the parties to a transaction must manifest an intention to create a fiduciary relationship whereby transferred property will be kept or used for the benefit of a particular beneficiary. In the absence of such a manifested intention, no trust is created and the parties are left with nothing more than an unsecured debt. Greenwald, 223 Minn. at 44-45; Farmers State Bank, 218 Minn. at 323 (citing RESTATEMENT OF TRUSTS § 12); Walz, 211 Minn. at 376; Marshall, 541 N.W.2d at 332. Since the agreement in this case clearly does not manifest an intent to create a trust relationship, the Debtors' argument that the agreement constitutes a spendthrift trust under Minnesota law

must fail. I need not, therefore, go on to determine whether the argument fails for other reasons.

II. ERISA-Qualified Plan Payments

Alternatively, and more forcefully, Debtors argue that the death benefits Debtor is receiving as the named beneficiary under the agreement are part of an "ERISA-qualified pension plan" which the Supreme Court held in Patterson are excluded from Debtor's estate. Here, too, Debtors' argument fails.

In 1974, Congress passed the Employee Retirement Income Security Act (ERISA) to protect employees from losing their pensions and employment benefits due to employer mismanagement. Massachusetts v. Morash, 490 U.S. 107, 112 (1989). ERISA achieves this goal by imposing various reporting, disclosure, fiduciary, participation, vesting, and funding requirements on employee pension and welfare benefit plans, and by amending the Internal Revenue Code to provide for federal tax benefits to both employers and employees. Boggs v. Boggs, 117 S. Ct. 1754, 1760 (1997); In re Orkin, 170 B.R. 751, 753 (Bankr. D. Mass. 1994); In re Hanes, 162 B.R. 733, 738-39 (Bankr. E.D. Va. 1994). Significantly for our purposes, § 206(d)(1) of ERISA contains an antialienation provision requiring employee pension plans to "provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d)(1) (1994).

In Patterson v. Shumate, 504 U.S. 753 (1992), the United States Supreme Court resolved a long simmering dispute in the courts regarding whether § 541(c)(2) excluded only beneficial interests in traditional spendthrift trusts. The Court held that the term "applicable nonbankruptcy law" as used in § 541(c)(2) of the Bankruptcy Code includes more than just state law covering traditional spendthrift trusts: it also includes federal law, namely ERISA. The Court then went on to hold that an antialienation provision in an "ERISA-qualified pension plan" is enforceable under § 541(c)(2) and that a debtor's right to receive retirement benefits under such a plan is excluded from the debtor's bankruptcy estate. See id. at 760. Thus, after Patterson, an ERISA-qualified pension plan containing an enforceable antialienation clause is given the same effect under § 541(c)(2) as a spendthrift trust under state law. Benefits from such a pension plan will not be included within the Debtor's bankruptcy estate as long as the pension plan is "ERISA qualified."

The Patterson Court did not discuss what constitutes an "ERISA-qualified pension plan," however, and there is no such language in ERISA itself. There is considerable disagreement in the courts as to the meaning of that term. One line of cases holds that to be an "ERISA-qualified pension plan," a plan must: (1) be governed by ERISA; and (2) include an antialienation

clause that is enforceable under ERISA. See, e.g., In re Baker, 114 F.3d 636, 638 (7th Cir. 1997); Kaler v. Craig (In re Craig), 204 B.R. 756, 760 (D.N.D. 1997); In re Bennett, 185 B.R. 4, 6 (Bankr. W.D.N.Y. 1995); Hanes, 162 B.R. at 740. A second line of cases holds that a pension plan is "ERISA qualified" only if the plan meets the foregoing requirements *and* has qualified for tax benefits under the Internal Revenue Code.[3] See, e.g., In re Harris, 188 B.R. 444, 449 (Bankr. M.D. Fla. 1995); Orkin, 170 B.R. at 754; In re Hall, 151 B.R. 412, 419-20 (Bankr. W.D. Mich. 1993); In re Sirois, 144 B.R. 12, 14 (Bankr. D. Mass. 1992). I need not resolve this dispute in the present case, however, because I find that the agreement is not an "ERISA-qualified pension plan" under either test.

A. *"Governed By ERISA"*

First and foremost, I conclude that the agreement in this case is not governed by ERISA. ERISA governs all "employee benefit plans" established or maintained by employers engaged in interstate commerce or in industries affecting interstate commerce, with certain exceptions not important for purposes of

[3] Debtors have made no argument that this plan qualifies for tax benefits under the Internal Revenue Code. Proof of such qualification is extraordinarily burdensome. From the very simplicity of the agreement, coupled with the absence of any evidence or argument from the Debtors of tax qualification, there is no doubt that these contributions and payments do not, and were not intended to, provide tax benefits to Debtor's father and his employer.

this decision. See 29 U.S.C. § 1003(a), (b) (1994). The term "employee benefit plan" includes both "employee welfare benefit plans" and "employee pension benefit plans," each of which is itself a defined term. See id. § 1002(1), (2), (3). An employee welfare benefit plan is a *"plan, fund, or program*" whose purpose is to provide participants and beneficiaries with certain nonpension benefits, many of which may be financed through insurance. Id. § 1002(1) (emphasis added). Welfare benefits subject to ERISA include medical, surgical, hospital care, sickness, accident, disability, and death benefits. Unemployment, vacation, apprenticeships, or other training programs, day care centers, scholarship funds, prepaid legal services, financial assistance for employee housing, holidays, and severance benefits may also be included. Id. Similarly, an employee pension benefit plan is any *"plan, fund, or program"* established or maintained to provide retirement income to employees or which results in the deferral of income by employees to funds extending beyond the limitation of their employment. Id. § 1002(2) (emphasis added).

In Fort Halifax Packing Co. v. Coyne, 482 U.S. 1 (1987), the United States Supreme Court held that a one-time, lump-sum severance benefits package did not constitute a "plan, fund, or program" under 29 U.S.C. § 1002, and that such a benefits package therefore did not fall within the coverage of ERISA. Stating

that ERISA was intended to provide a uniform set of administrative procedures to employers who establish and maintain employee benefit plans, the Court reasoned that to fall within ERISA's regulation of "plans, funds, or programs," a plan must require the existence of an ongoing administrative scheme to administer the plan's benefits. Id. at 11-12. Although the Fort Halifax Court did not specifically define what constitutes an "ongoing administrative scheme," the Court did state that:

> The requirement of a one-time, lump-sum payment triggered by a single event requires no administrative scheme whatsoever to meet the employer's obligation. The employer assumes no responsibility to pay benefits on a regular basis, and thus faces no periodic demands on its assets that create a need for financial coordination and control. Rather, the employer's obligation is predicated on the occurrence of a single contingency that may never materialize. The employer may well never have to pay the severance benefits. To the extent that the obligation to do so arises, satisfaction of that duty involves only making a single set of payments to employees at the time the plant closes. To do little more than write a check hardly constitutes the operation of a benefit plan. Once this single event is over, the employer has no further responsibility. The theoretical possibility of a one-time obligation in the future simply creates no need for an ongoing administrative program for processing claims and paying benefits.

Id. at 12.

Because the Fort Halifax decision did not specifically define what constitutes an "ongoing administrative scheme," the lower courts have had some difficulty determining exactly which plans satisfy this test. See Cvelbar v. CBI Ill. Inc., 106 F.3d 1368, 1375 (7th Cir. 1997) (stating that distinguishing between

plans that are covered by ERISA and those that are not is "necessarily a 'matter of degrees but under Fort Halifax degrees are crucial.'" (quoting Simas v. Quaker Fabric Corp., 6 F.3d 849, 853 (1st Cir. 1993)). In a post-Fort Halifax decision, the Court of Appeals for the Eighth Circuit articulated the following test for determining whether a benefits plan falls within the ambit of ERISA:

> The pivotal inquiry is whether the plan requires the establishment of a separate, ongoing administrative scheme to administer the plan's benefits. *Simple or mechanical determinations do not necessarily require the establishment of such an administrative scheme; rather an employer's need to create an administrative scheme may arise where the employer, to determine the employees' eligibility for and level of benefits, must analyze each employee's particular circumstances in light of the appropriate criteria*.

Kulinski v. Medtronic Bio-Medicus, Inc., 21 F.3d 254, 257 (8th Cir. 1994) (emphasis added). Thus, in deciding whether an employer's obligations are complex enough to require an ongoing administrative program, the courts interpreting Fort Halifax have generally considered "whether the employer's undertaking or obligation requires managerial discretion in its administration." Cvelbar, 106 F.3d at 1377 (citing Schonholz v. Long Island Jewish Med. Ctr., 87 F.3d 72, 76 (2d Cir. 1996)). See also DeLaye v. Agripac, Inc., 39 F.3d 235, 237 (9th Cir. 1994); James v. Fleet/Norstar Fin. Group, Inc., 992 F.2d 463, 466 (2d Cir. 1993); Bogue v. Ampex Corp., 976 F.2d 1319, 1323 (9th Cir. 1992); Angst v. Mack Trucks, Inc., 969 F.2d 1530, 1532 (3rd Cir. 1992);

Fontenot v. NL Indus., Inc., 953 F.2d 960, 962 (5th Cir. 1992); Emmenegger v. Bull Moose Tube Co., 953 F. Supp. 292, 295-96 (E.D. Mo. 1997); Pane v. RCA Corp., 667 F. Supp. 168, 170-71 (D.N.J. 1987).

The agreement in this case does not require the existence of an ongoing administrative scheme sufficient to make it an employee benefit plan under 29 U.S.C. § 1002. Although the agreement contemplates multiple payments over a period of 10 years rather than a single, lump-sum payment as in Fort Halifax, the agreement nevertheless fails to create an ongoing administrative scheme because: (1) the amount, timing and duration of the payments are fixed by the agreement; (2) there are no assets to be administered by fiduciaries pursuant to a trust agreement and therefore no ongoing funding mechanism to be administered; and (3) the agreement does not require the employer to determine the employee's eligibility for and level of benefits by analyzing the employee's particular circumstances in light of appropriate criteria. The "deferred compensation" payments are payable, without any equivocation, so long as the employee continues in the law firm's employ through January 1, 1989, which he did. If the employee had not done so, the decision on eligibility would have been made on a one-time basis with respect to a single employee based, generally, on a dispute over whether termination was for cause. Such a dispute is a simple state

court contract dispute between employer and employee over the terms and conditions of a single deferred compensation agreement, and not a dispute subject to federal jurisdiction under ERISA.

The recent Ninth Circuit decision in DeLaye v. Agripac, Inc., supra, is precisely on point. In DeLaye, the CEO of Agripac entered into an Employment Contract pursuant to which he would be paid differing severance benefits, depending on whether he was removed from his position with or without cause. He was terminated, according to the company, for cause and subsequently sued, contending that his Employment Contract was governed by ERISA. The court held otherwise, stating that, under Fort Halifax, "the purpose of ERISA preemption of state law is to create a single set of regulations to govern benefit plans' complex and ongoing administrative activities:"

> DeLaye's contract does not implicate an ongoing administrative scheme. Once Agripac decided to terminate DeLaye, the severance calculation became one akin to that in Fort Halifax--a straightforward computation of a onetime obligation. . . . While payment could continue for as long as two years, there is nothing discretionary about the timing, amount or form of the payment. Sending DeLaye, a single employee, a check every month plus continuing to pay his insurance premiums for the time specified in the employment contract does not rise to the level of an ongoing administrative scheme.

Id. at 237.

A somewhat similar decision was made in Angst v. Mack Trucks, Inc., supra. In Angst the Third Circuit held that an agreement which covered 69 senior employees and provided that

they would receive a lump sum payment of $75,000 and one year of continued benefits if they voluntarily left Mack's employ was not governed by ERISA because the "buyout plan's provision of a year of continued benefits, like that plan's provision for a one-time lump sum payment, did not require the creation of a new administrative scheme, and did not materially alter an existing administrative scheme." Id. at 1539. Significantly, both the agreement in this case and the agreement in Angst raised an issue of eligibility in the case of a dispute over the voluntary or involuntary nature of the severance. See also Nagy v. Riblet Prods. Corp., 79 F.3d 572 (7th Cir. 1996) (holding that a suit as to whether an employee was discharged for "cause" is a state based employment action despite presence of provision requiring that the employee continue to receive all salaries, benefits, bonuses, and other direct and indirect forms of compensation in case of discharge without cause).

To be sure, the distinction between a benefit plan, governed by ERISA, and a simple contract dispute between employer and employee over benefits, governed by state law, is, as one court has recently said, "opaque." Simas, 6 F.3d at 75.[4] Drawing the line here, however, has been made a bit easier because this

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[4] Indeed, several decisions might be cited in support of the view that discretion of any sort in management coupled with ongoing obligations to pay, even to a single employee, subjects the benefits agreement to ERISA coverage. See, e.g., Cvelbar, supra.

agreement was clearly intended to be a simple arrangement between a single employer and employee;[5] unfunded and unfettered by administrative difficulties. It seems to me, therefore, that if any benefits agreement falls outside the purview of ERISA (and Fort Halifax dictates that some do), it is this one. For this reason, I conclude that this agreement does not fall within the purview of ERISA, and is thus not excludible from the bankruptcy estate.

B. *Antialienation Clause Enforceable Under ERISA*

Moreover, even if the pension agreement in this case constitutes an "ERISA-qualified pension plan," the antialienation clause contained in the agreement is not enforceable under ERISA for two reasons.

First, the antialienation clause in this case restricts transfers made by the *Debtor's father*, but does not restrict transfers made by the Debtor himself. As stated above, the Debtors base their argument for exclusion on the following language contained in the agreement:

> Payment Not Assignable for Liabilities. *Employee* shall not have the right to assign, encumber or dispose of his rights to receive payments hereunder. *Such payments* and rights thereto are expressly declared to be nonassignable and nontransferable. In the event of any attempt at assignment or transfer, Company shall have no further liability hereunder.

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[5] I do recognize that single employee agreements can be covered by ERISA if they are sufficiently clearly delineated. See, e.g., Cvelbar, supra.

The language of this antialienation clause is specifically limited to the Debtor's father and does not purport to restrict transfers by nonemployees designated as beneficiaries under the agreement. Thus, even if the plan in this case were "ERISA-qualified," which the Court believes it is not, Debtor's benefits under the plan would still be property of the bankruptcy estate because the language of the antialienation clause does not restrict the transfer of Debtor's interest to the bankruptcy estate.

Secondly, even if the antialienation clause were construed to foreclose alienation by Debtor as well as by his father, the antialienation clause restricting the transfer of Debtor's interest under the agreement is not enforceable under ERISA. Antialienation clauses in pension plans are enforceable under ERISA § 206(d)(1), which provides that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d)(1) (1994). Although it is clear that this provision prohibits the alienation of pension plan interests by participating employees of employee pension plans, see generally Guidry v. Sheet Metal Workers Nat'l Pension Fund, 493 U.S. 365 (1990), it is much less clear whether § 206(d)(1) acts to prevent the transfer of pension plan interests held by nonparticipating plan beneficiaries. Indeed, in Estate of Altobelli v. Int'l Bus. Mach. Corp., 77 F.3d 78 (4th Cir.

1996), and Fox Valley & Vicinity Construction Workers Pension Fund v. Brown, 897 F.2d 275 (7th Cir. 1989), the Courts of Appeals for the Fourth and Seventh Circuits each held that the antialienation provision contained in § 206(d)(1) of ERISA is limited to transfers made by participating employees of an employee pension plan, and does not prevent designated nonparticipating beneficiaries from transferring away their beneficial interests under such plans. Id. at 279-80. In reaching this conclusion, the Fourth and Seventh Circuits reasoned that the purpose of ERISA's spendthrift provision was to protect participating *employee*s of employee pension plans by "'ensur[ing] that the *employee's* accrued benefits are actually available for retirement purposes,'" and that nonparticipating beneficiaries therefore did not fall within the scope of § 206(d)(1)'s coverage. See Altobelli, 77 F.3d at 81; Fox Valley, 897 F.2d at 279 (quoting H.R. REP. NO. 93-807 (1974), reprinted in 1974 U.S.C.C.A.N. 4639, 4670, 4734 (emphasis added)). The Fourth and Seventh Circuits concluded that ERISA's antialienation provision "'focus[es] on the assignment or alienation of benefits by a participant, not the waiver of a right to payment of benefits made by a designated beneficiary.'" Altobelli, at 81 (quoting Fox Valley, 897 F.2d at 279). But see Krishna v. Colgate Palmolive Co., 7 F.3d 11, 16 (2d Cir. 1993); McMillan v. Parrot, 913 F.2d 310, 311-12 (6th Cir. 1990) (holding that

nonparticipating beneficiary's waiver of pension plan interest is ineffective because pension plan beneficiaries may only be determined by looking to plan documents).

Moreover, in Lyman Lumber Co. v. Hill, 877 F.2d 692, 693-94 (8th Cir. 1989), the Court of Appeals for the Eighth Circuit held that a nonparticipating beneficiary's interest in an employee pension plan may be alienated by specific language contained in a state court divorce decree. Although the Eighth Circuit did not specifically address § 206(d)(1) in reaching this conclusion, a ruling that § 206(d)(1) prohibits transfers of pension plan interests held by nonparticipating beneficiaries would undoubtedly be inconsistent with the Eighth Circuit's holding in Lyman Lumber.

In accordance with the Eighth Circuit's Lyman Lumber decision, I adopt the view that § 206(d)(1) does not apply to restrict the transferability of pension plan interests held by nonparticipating beneficiaries. As stated by the Altobelli and Fox Valley courts, in enacting § 206(d)(1) of ERISA, Congress was concerned with protecting the pensions of employees who participate in employee pension plans, not with protecting the employees' designated beneficiaries. Moreover, I am unpersuaded by the contrary argument that to allow nonparticipating beneficiaries' to transfer their interests under a pension plan would impose a burdensome administrative obligation on plan

administrators. Although ERISA requires plan administrators to discharge their duties "in accordance with the documents and instruments governing the plan," see 29 U.S.C. § 1104(a)(1)(D) (1994), this language serves to delineate the fiduciary duties of plan administrators and does not create an enforceable restriction on the transferability of a beneficiary's interest in a pension plan under § 541(c)(2) of the Bankruptcy Code and Patterson v. Shumate. Accordingly, I hold that the antialienation clause, even if it purported to limit Debtor's right to alienate, in this case is unenforceable under ERISA.[6]

With this, it is appropriate to rule in the trustee's favor with one qualification. Neither party briefed these issues at any length, nor, I expect, came close to understanding just how complex a problem the facts might create. It is for that reason that it appears appropriate to give each side the opportunity to review this decision and request an evidentiary hearing.

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[6] Having decided these weighty issues and concluding that these benefits are excluded from the estate for two very good reasons, I need not go on to discuss other issues that may be raised by these facts. These include, inter alia, whether the absence of a funding mechanism in a plan otherwise governed by ERISA eliminates ERISA protection for single employee plans. See Cvelbar, 106 F.3d at 1378 (though source of funding of pension plan may be unknown, terms are still ascertainable and plan is ERISA covered). Nor is it necessary to discuss whether this would be considered a "top hat" plan, i.e., the rare subspecies of deferred compensation plans designed to cover top end employees through unfunded obligations which, while governed by ERISA, are exempt from most of its substantive provisions, including its antialienation provisions. Leonard v. Sunnyglen Corp., 214 B.R. 621, 624 (Bankr. C.D. Cal. 1997).

ACCORDINGLY, IT IS HEREBY ORDERED THAT the Trustee's objection to the Debtors' claim that Mark Yaeger's interest in his father's pension plan is excluded from the bankruptcy estate is SUSTAINED, unless within 10 days of the date of this order either side requests an evidentiary hearing on any of the issues raised, in which case the Court will set one down.

IT IS SO ORDERED.