
Undue Influence Claims Under ERISA

By Barry L. Salkin

In this article, the author analyzes undue influence claims under the Employee Retirement Income Security Act of 1974.

The Employee Retirement Income Security Act of 1974 (ERISA) does not expressly address the circumstances, if any, in which a non-beneficiary¹ may avoid the payment of benefits to a named beneficiary. When ERISA is silent, courts must develop federal common law,² including the scenario in which ERISA preempts a state statute, as will be discussed below, but it itself is silent on the relevant issues.³

However, because there is no established body of federal common law to apply to improperly designated beneficiaries,⁴ in cases dealing with fraud, duress, forgery, competence (mental capacity) undue influence,⁵ a type of fraud,⁶ federal courts look to state law principles for guidance.⁷ Thus, even if a federal court acknowledges that federal common law controls, a federal court may resort to state law principles of undue influence,⁸ although, at least in theory, that is inconsistent with having a uniform set of rules governing ERISA matters.⁹ Additionally, while the relief available under ERISA may differ from that afforded by state law, the elements of any federal ERISA claim parallel those of a state law undue influence claim.¹⁰

However, while district courts frequently look to a state's laws of undue influence, the U.S. Court of Appeals for the Sixth Circuit in *Tinsley v. General Motors Corp.*¹¹ provided guidance for a federal common law of undue influence.¹² The court began by stating that, "Since ERISA does not contain any provisions regulating the problems of beneficiary designations that are forged, the result of undue influence, or otherwise improperly procured, it appears that federal common law must apply to [these] claims. Furthermore, because there is no established common law . . . dealing with forgery and undue influence in the designation of beneficiaries, [courts often] look to state law principles for guidance."¹³

The Sixth Circuit then set forth some general principles regarding undue influence. It indicated that undue influence is generally defined as influence that is sufficient to overpower volition, destroy free

Barry L. Salkin, a member of the Editorial Advisory Board of *Benefits Law Journal*, is of counsel at The Wagner Law Group concentrating his practice in ERISA and employee benefits law. He is a fellow of the American College of Employee Benefits Counsel and is the author of numerous articles and book chapters dealing with employee benefits issues.

agency, and impel the grantor to act against the grantor's inclination and free will."¹⁴ A showing of mere motive or opportunity to exercise excessive control over another is not sufficient to make out a claim of undue influence. Rather, the influence must actually be exerted either prior to or at the time of execution of the relevant document.¹⁵

FACTORS

The Sixth Circuit then listed a series of factors that courts have looked to¹⁶ when determining whether undue influence has been exerted in a particular case:

- (i) The physical and mental condition of the benefactor;
- (ii) Whether the benefactor was given any disinterested advice with respect to the disputed transaction;
- (iii) The unnaturalness of the gift;
- (iv) The beneficiary's role in procuring the benefit and the beneficiary's possession of the document conferring the benefit;
- (v) Coercive or threatening acts on the part of the beneficiary;
- (vi) Control of the benefactor's financial affairs by the beneficiary; and
- (vii) The nature and length of the relationship between the beneficiary and benefactor.¹⁷

It concluded by stating that the determination of undue influence was fact intensive,¹⁸ and may need to be proven by circumstantial evidence.¹⁹ A plan's committee may address issues of undue influence.²⁰

Courts have set forth different formulae for establishing an undue influence claim. One secondary source lists the requirements as:

- (i) A person who is susceptible to influence;
- (ii) An opportunity to exert undue influence;
- (iii) A disposition to exert undue influence; and
- (iv) A result indicating undue influence.²¹

By way of comparison, under Alabama law,²² a plaintiff seeking to establish undue influence must show that:

- (i) A confidential relationship existed between a favored beneficiary and the testator;
- (ii) Influence of or for the beneficiary was dominant and controlling in that relationship; and
- (iii) There was undue activity on the part of the dominant party in procuring the execution of the document.

In Virginia, establishing undue influence requires “prima facie evidence of great weakness of mind and grossly inadequate consideration of suspicious circumstances, or the existence of a fiduciary or confidential relationship.”²³

Under Indiana law, “under the common law, when transactions occur between a dominant and subordinate party, which benefit the dominant party, the law imposes a presumption that the transaction was the result of undue influence exerted by the dominant party, constructively fraudulent and therefore void.”²⁴ This type of relationship would include fiduciary relationships but be more expansive.

BURDEN OF PERSUASION

Procedurally, in a dispute over the validity of a facially valid change in beneficiary form, the burden of persuasion rests on the party seeking to set aside the document.²⁵ However, beyond that point, the federal common law of undue influence is silent. For example, New York, while the burden of proof is generally on the party contesting the designation of beneficiary, the burden can shift to the proponent of the designation if “the facts prompt suspicion that undue influence was indeed exerted, such as when a confidential or fiduciary relationship between the decedent and the designated beneficiary.”²⁶ Whether the burden shifts is a factual determination. Federal common law accords documents which are valid on their face a presumption of validity against attacks based on undue influence.²⁷ Were it otherwise, ERISA administrators would be unable to safely rely on the paperwork they receive on a daily basis without undertaking a thorough and impracticable investigation.²⁸

However, as the district court noted in *Franklin v. Gibson*,²⁹ “In the Restatement of Trusts, nearly every reference excluding extrinsic evidence or discussing the parol evidence rule includes the exceptions of “fraud, duress, undue influence or mistake.” As an illustration,

Section 21, comment a of the Restatement (Third) of Trusts states that, “Under the parol evidence rule, where the manifestation of the settlor’s intention is integrated in a writing, that is, if a written instrument is adopted by the settlor as the complete expression of the settlor’s intention, extrinsic evidence is not admissible to contradict or vary the terms of that instrument in the absence of fraud, duress, mistake, or other grounds for reformation or rescission.”³⁰ With respect to statutes of limitations with respect to undue influence claims, in *Elliott and Barton v. Mitsubishi Cement Corp.*,³¹ the district court found that an undue influence claim was an action based on a rescission of a contract in writing that accrued when the contract was negotiated and signed and subject to California’s four year statute of limitations on such claims.

ERISA PREEMPTION

Although there are some contrary holdings,³² the great majority of cases hold that state law claims of undue influence with respect to ERISA plans³³ are preempted by ERISA.³⁴ That a counterclaim involves a dispute over a change of beneficiary form in no way defeats ERISA preemption.³⁵

Undue influence may be an equitable defense, but a district court found no support for the proposition that considerations of undue influence and misrepresentations took the case outside of ERISA.³⁶ Some courts have held that a plan committee should have jurisdiction to determine if a beneficiary designation resulted from undue influence, and, if it fails to do so, but instead interpleads the case into district court, the standard of judicial review is de novo.³⁷ The issue arises because of the Supreme Court’s decision in *Kennedy* that a plan administrator’s obligation is simply to apply the terms of a plan. Some decisions have held based on *Kennedy*, that a plan administrator could rely upon a beneficiary designation in circumstances that suggested that the designation was the result of undue influence.

In *Dunlop v. Ormet Corp.*³⁸ the district court stated that “under *Kennedy*, if the plan sets forth procedures that comply with ERISA’s requirements, and if the plan administrator follows those procedures, no duty may be imposed upon the plan administrator to examine external documents, which could create ambiguities concerning the dispensation of benefits.”³⁹

In *Young v. Anderson*,⁴⁰ the U.S. District Court for the Eastern District of Michigan voiced a similar sentiment, explaining that, “Here, the relevant plan document, the application, clearly designated Anderson as the beneficiary. There is nothing in the document to indicate any error

of any kind. Ford is therefore entitled to rely on the application. Ford's decision to pay Anderson is correct under the plan document rule."⁴¹

In *Dahl v. Aerospace Employees*,⁴² the U.S. District Court for the Eastern District of Virginia followed *Kennedy* in holding that there was no federal common law fraud exception. Courts in the Eleventh Circuit follow *Metropolitan Life & Annuity Company of Connecticut v. Akpela*,⁴³ in which the court held that "as mandated by the Supreme Court in *Kennedy* that a party who is not a named beneficiary of an ERISA plan may not sue the plan for any plan benefit."⁴⁴

Therefore, in *In re Hendricks III*,⁴⁵ the court found *Tinsley v. General Motors*, a pre-*Kennedy* case, not to be persuasive."

In contrast, cases that continue to apply *Tinsley v. General Motors* after *Kennedy*⁴⁶ such as *Metropolitan Life Insurance Co. v. Smith Howell*, rely upon the position that an undue influence challenge is a challenge to the validity of a plan document, although arguably that position is stronger with respect to a forgery claim, because to comply with the terms of a plan, presumably the plan administrator needs to determine if the beneficiary designation form was executed by the plan participant or a third party. In an undue influence challenge, the beneficiary designation form will be executed by the plan participant, and the issue is whether the designation was effectively made by a third party.

NOTES

1. *Manning v. Hayes*, 212 F.3d 866 (5th Cir. 2000), cert. den. 532 U.S. 941 (2001); *Washington v. Ganaway*, 2008 WL 2604816 (N.D. Tex. July 2, 2008), *Tinsley v. General Motors Corp.*, 227 F.3d 700 (6th Cir. 2000); *Phoenix Mutual Life Insurance Co. v. Adams*, 30 F.3d 554, 562 (4th Cir. 1994) ("ERISA is silent as to any provision regarding the change in beneficiaries"); *Sun Trust Bank v. Aetna Life Ins. Co.*, 251 F. Supp. 2d 1282, 1292 (E.D. Va. 2003); *Guardian Life Ins. Co. v. Bowes*, 2012 WL 1378556 (W.D. Va. Apr. 20, 2012); *Franklin v. Gibson*, 38 F. Supp. 2d 590 (M.D. Tex. 1999) ("There is no mention in ERISA of how a plan administrator should deal with fraud, forgery, or mistake in a change of beneficiary form"); *Metropolitan Life Ins. Co. v. Johnson*, 297 F.3d 558, 564 (7th Cir. 2002) ("ERISA does not contain any provision governing disputes between claimants as to plan proceeds or address whether an insured has effectively changed a beneficiary designation. *Prudential Ins. Co. v. Schmid*, 337 F. Supp. 2d 325, 329 (D. Mass. 2004), quoted in *Metropolitan Life Ins. Co. v. Giscombe*, 2022 WL 2467066 (E.D.N.Y. Jan. 21, 2022) ("The statute contains no specific provision for the settlement of disputes between claimants"); *Gratz v. Gratz*, 2020 WL 6164307 (M.D. Pa. Sept. 18, 2020) ("ERISA provides no explicit text defining undue influence claims"); *Mohammed v. Kerr*, 53 F.3d 911, 913 (8th Cir. 1995); *Lyman Lumber Co. v. Hill*, 877 F.2d 692 (8th Cir. 1989); *Equitable Life Ins. Co. of the United States v. Chrysler*, 66 F.3d 944 (8th Cir. 1995). One commentator believes that the courts have not stated properly the issue that ERISA does not address. Albert Feuer, in "Who Is Entitled to Survivor Benefits from ERISA Plans?" 40 *John Marshall Law Rev.* 917, 1022 (2007) (hereinafter, Feuer, "Who is Entitled?"), would frame the statutory omission as "ERISA does not set

forth the conditions a beneficiary designation must fulfill to satisfy the requirement that an ERISA plan be established and maintained pursuant to a written agreement.”

2. *Thomason v. Aetna Life Ins. Co.*, 9 F. 3d 645, 647 (7th Cir. 1993); *Phoenix Mutual Life Ins. Co. v. Adams*, supra, n. 1; *Sun Trust Bank v. Aetna Life Ins. Co.*, supra, n. 1; *Krishna v. Colgate Palmolive Co.*, 7 F. 3d 11 (2d Cir. 1993), cited in *Metropolitan Life Ins. Co. v. Giscombe*, supra, n. 1; *Hartford Life & Accident Ins. Co. v. Kowalski*, 654 F. Supp. 3d 884 (N.D. Cal. 2023) (The elements of undue influence are determined by federal common law.) See also Albert Feuer, “Determining the Death Beneficiary under an ERISA Plan and the Rights of Such a beneficiary,” 54 *Tax Management Memorandum* 323 (August 26, 2013). (“Federal common law rather than state common law determines how the doctrines of fraud, undue influence, capacity to make designations apply to beneficiary designation.”). The authority of the federal courts to promulgate federal common law is very limited. *Rodriguez v. FDIC*, 140 S. Ct. 713 (Feb. 25, 2020). Courts must be conscientious to fashion federal common law only when it is necessary to effectuate the purposes of ERISA. *Provident Life & Accident Ins. Co. v. Waller*, 906 F. 2d 985, 992 (4th Cir. 1990) Cf. *Jenkins v. Montgomery Industries, Inc.*, 77 F. 3d 740, 744 (4th Cir. 1996) (Courts considering ERISA regulated plans often apply general principles of contract law, insurance law, or trust law that do not conflict with the Congressional purpose of enacting ERISA) and *Mohammed v. Kerr*, 53 F. 3d 911, 913(8th Cir. 1985) (Courts “may look to state law for guidance in developing federal common law, but it is inappropriate to apply state law if it conflicts with ERISA or its underlying policies”). As is the case with many federal statutes, several policies are reflected. In *Kennedy v. Plan Administrator for Dupont Savings & Investment Plan*, 555 U.S. 285, 301 (2009), the Supreme Court noted three important ERISA objectives: (i) simple administration of plans;(ii) avoiding double liability for plan administrators; and (iii) ensuring that plan beneficiaries receive benefits promptly. Addressing difficult issues such as undue influence is certainly on the surface inconsistent with all of these Congressional objectives. However, a federal common law of undue influence is arguably consistent with ERISA’s purposes. See, for example, *American International Life Insurance Company of New York v. Vasquez*, 2003 WL 548738 at *5 (S.D.N.Y. Feb. 23, 2003) (“[k]eeping in mind that one of the primary purposes of ERISA is to promote the interests of employees and their beneficiaries, courts have customarily used evidence of the insured’s intent to establish the primary beneficiary.”). Further, while an important policy objective of ERISA is strict adherence to the plan document, applying doctrines such as the undue influence doctrine is not inconsistent with that policy where the improper procurement of a beneficiary designation would call into question the validity of the plan document itself. *Metropolitan Life Insurance Co. v. McCloskey*, 36 EBC 2755 (N.D. Ohio 2005). Cf. *Lincoln v. National Life Ins. Co. v. Ridgway*, 2018 WL 883881 (W.D. Wash. Feb. 14, 2018) (Because the interpleader action came to the court on the basis of federal question jurisdiction, federal law governs the question of undue influence).

3. *Connecticut General Life Insurance Co. v. Mitchell*, 1995 WL 469714 at *7 (S.D.N.Y. August 8, 1995); *Aetna Life Insurance Co. v. Frank*, 592 F. Supp. 3d. 317 (S.D.N.Y. 2022); *McClure v. Life Insurance Co. of North America*, 84 F. 3d 1129,1133 (9th Cir. 1996); *Emard v. Hughes Aircraft Co.*, 153 F. 3d 949, fn. 3 (9th Cir. 1998).

4. *American United Life Ins. Co. v. Arthur*, 2016 WL 165034 at *2 (W.D.N.C. Jan. 14, 2016); *Metropolitan Life Ins. Co. v. Giscombe*, supra, n. 1; *Tinsley v. General Motors Corp.*, supra, n. 1.

5. While issues relating to undue influence generally arise in connection with beneficiary designations [See, for example, Salkin, “Challenges to Beneficiary Designations under ERISA,” 27 *Benefits Law Journal* No.2, Summer 2014], undue influence challenges are made in other contexts as well. See, for example, *Sharer v. Siemens Corp.*,

2007 WL 1006681 (W.D. Penn. March 29, 2007), in which the district court stated that in determining whether a waiver is made knowingly and willfully, a court may consider the possibility of undue influence; *Cuchara v. Gai-Tronics Corp.*, 129 Fed. Appx. 728 (3rd Cir. 2005) (whether a release was the result of fraud or undue influence); *Jakimas v. Hoffman LaRoche*, 485 F. 3d 770 (3d Cir. 2007) (same); *Schatter v. United States*, 746 F. 3d 319 (6th Cir. 1984) (whether settlement agreement was the product of undue influence); *United States v. Woods*, 554 F. 3d 611 (6th Cir. 2011) (whether a plea agreement was the result of undue influence). One of the bases for reformation of a contract is undue influence. *Hackett v. PBGC*, 486 F. Supp. 1357 (D. Md. 1980). Additionally, in the law of trusts, a court may reform a trust to the extent that it was procured by wrongful conduct such as undue influence, duress or fraud. See Restatement (Third) of Trusts Section 12.62, cmt. a (2003), and Restatement (Third) of Property (Wills and Other Donative Transfers) Section 8.3, both quoted in *Skinner v. Northrop Grumman Retirement Plan*, 2012 WL 887600 (9th Cir. 2012).

6. *Guardian Life Ins. Co. v. Bowes*, supra, n. 1; *Davis v. Davis*, 2017 WL 3820962 (M.D. Ala. Aug. 31, 2017); *Sun Life Assurance Co. v. Tinsley*, 2007 WL 1052485 (W.D. Va. Apr. 4, 2007); *Davis v. Adelphi Communications Corp.*, 475 F. Supp. 2d 600 (N.D. Va. 2007). As a species of fraud, the party making the challenge on undue influence grounds may need to establish it case by clear and convincing evidence. Cf. In Connecticut, when a person alleged to have exerted undue influence is not in a fiduciary relationship with the other party. The standard is clear and convincing evidence, discussed in *Wisconsin Province of the Society of Jesus v. Cassem*, 486 F. Supp. 3d 527 (D. Conn. 2020). In *Davis v. Davis*, supra, the U.S. District Court for the Middle District of Alabama did not decide whether the relevant standard is clear and convincing evidence or preponderance of the evidence).

7. *American United Life Ins. Co. v. Arthur*, supra, n. 3; *Tinsley v. General Motors Corp.*, supra, n. 1; *Sun Life Assurance Co. v. Horn*, 2018 WL 704867 (D. Md. Feb. 5, 2018); *Horton v. Reliance Standard Life Ins. Co.*, 141 F. 3d 1038, 1041 (11th Cir. 1998) (acknowledging that in an ERISA action, when crafting a body of common law, federal courts may look to state courts as a model because of the states' greater experience in interpreting insurance contracts and resolving coverage disputes); *Metropolitan Life Ins. Co. v. Kelly*, 2017 WL 3085519 (E.D. Mich. July 17, 2017) (in the "absence of established federal common law in this Circuit dealing with the issues of undue influence or competence, it is proper to look to state law principles for guidance."); *Johnson v. American United Life Ins. Co.*, 716 F. 3d 813, 819 (4th Cir. 2013) ("although courts apply federal common law rules of contract interpretation when construing a policy governed by ERISA, we look to principles of state common law to guide our analysis."); *Herndon v. Dupont*, 145 F. 3d 1331, 1333 (6th Cir. 1998), quoted in *Franklin v. Gibson*, 38 F. Supp. 2d 590 (M.D. Tenn. 1999) ("In order to ascertain the applicable law, we look to either the statutory language or finding no answer there, to federal common law which, if not clear, may draw guidance from analogous state law."); *Metropolitan Life Ins. Co. v. Giscombe*, supra, n. 1 (Courts have also referenced state law when ERISA policies are challenged on the basis of forgery, undue influence, and mental incapacity). Whether state law is binding or merely instructive will not be relevant if both approaches produce the same result. *Metropolitan Life Ins. Co. v. Smith Howell*, 2020 WL 974893 (W.D.N.C. Feb. 28, 2020), fn.1. There are alternative sources of federal common law, such as the Restatements. See, e.g., *Gamewell Mfg., Inc. v. HVAC Supply, Inc.*, 715 F. 2d, 112 (4th Cir. 1983) and *Reid v. IBM Corp.*, 1997 WL 357 (S.D.N.Y. 1999).

8. *Davis v. Davis*, supra, n. 6 (applying Alabama law of undue influence); *Woolf v. Wiggington*, 659 Fed. App'x 526 (10th Cir. August 31, 2016) (applying Utah law of undue influence); *Metropolitan Life Ins. Co. v. Austin & Brown*, 2015 WL 7770659 (E.D.

Mich. December 3, 2015) (Applying Michigan law of undue influence); *Metropolitan Life Ins. Co. v. Kelly*, supra, n. 7 (same); *Sun Life Assurance Co. of Canada (U.S.) v. Gruber*, 2007 WL 4457771 at *14 (S.D.N.Y. Dec. 14, 2007) (applying New York law); *Metropolitan Life Ins. Co. v. Giscombe*, supra, n. 1 (same); *Harmon v. Harmon*, 962 F. Supp. 2d 873 (S.D. Tex. 2013) (Applying Texas Law of undue influence); *Davis v. Adelphia Communications Corp.*, 475 F. Supp. 2d 600 (W.D. Va. 2007); *Wisconsin Province of the Society of Jesus v. Cassem*, 486 F. Supp. 3d 527 (D. Conn. 2020); (Applying Connecticut law of undue influence). Cf. *Ivie v. Ivie*, 2018 WL 8333539 (S.D. Ind. Feb. 13, 2018) (Applying Indiana law of undue influence with no discussion of federal common law) and *Metropolitan Life Ins. Co. v. Yeary*, 208 F. 3d 214 (6th Cir. 2000) (applying Ohio law of undue influence where issue of ERISA preemption not raised at district court level). Of course, even if state substantive law applies, an undue influence claim will be dismissed if it does not comply with FRCP Rule 56. See, *Schreffler v. Metropolitan Life Ins. Co.*, 2006 WL 1127096, 37 EBC 2115 (D. Ariz. Apr. 25, 2006) (Claim of undue influence dismissed because unsupported by evidence in the form of an affidavit and based on his personal knowledge).

9. See, *Egelhoff v. Egelhoff*, 532 U.S. 141, 148 (2001) (“One of the principal goals of ERISA is to enable employers to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits”); *Phoenix Mutual Life Ins. Co. v. Adams*, supra, n. 1 (“federal common law [on ERISA] should be consistent across the Circuits.”); *Metropolitan Life Ins. Co. v. McCloskey*, 36 EBC 2755 (N.D. Ohio 2005) (finding federal common law on the basis of the law of a single state would be inconsistent with ERISA’s clear intent that ERISA be a uniform federal scheme across the country). *Alliant Techsystems, Inc. v. Marks*, Civ. No. 04-0539 [JRT/FIN] (D. Minn. March 31, 2008) (Applying the standard for determining undue influence in the Eighth Circuit based upon the law of most states (preponderance of the evidence), rather than the clear and convincing evidence of the forum state, Minnesota). Cf. Sarabeth A. Raybo, “Divorcees Turn Around in Their Graves as Ex-Spouses Cash In: Codified Constructive Trusts Ensure An Equitable Result Regarding ERISA Covered Employee Benefit Plans,” 106 Michigan Law Review 373, 386 (November 2007) (hereinafter Raybo, “Divorcees”) (“federal common law should not be a backdoor vehicle for implementing state law.”) and Patrick L. Vasey, “R.I.P.: The Federal Common Law Waiver Approach to Retirement Plan Death Benefit Payments Rests in Peace after *Kennedy v. Plan Administrator for Dupont Savings and Investment Plan*, 497 F. 3d 426 (5th Cir. 2007), aff’d 129 S. Ct. 865 (2009),” 88 Nebraska Law Rev. 205, 219-220 (2009) (“An even more troubling aspect of the federal common law waiver approach is the courts’ use of state law just held preempted. . . . This blatantly and inappropriately undermines the ERISA express preemption provision, producing the same result as if state law was never preempted.”).

10. *Gratz v. Gratz*, supra, n. 1.

11. Supra, n. 1. For articles discussing *Tinsley v. General Motors*, see Feuer, “Who is Entitled,” supra, n. 11; Raybo, “Divorcees,” supra, n. 9; David Pratt, “Marriage, Divorce, Death, and ERISA,” 31 Quinnipiac Probate Law Journal 100, 163-164 (2018); Jeaneen Johnson & Colleen K. O’Brien, “Beneficiary Designations-Show Me the Money”; and Stephen M. Schatz, Stephen L. Cotter, and Bradley S. Wolff, “Insurance,” 56 Mercer Law Rev. 259, 280 (2004).

12. *Washington v. Ganaway*, supra, n. 1 (The federal common law of undue influence, while not necessarily clear, begins with the Sixth Circuit case of *Tinsley v. General Motors*). *Tinsley* was followed in *United Food and Commercial Workers Union Employer Pension Fund v. Rubber Associates*, 812 F. 3d 521, 527 (6th Cir. 2016); *Board of Trustees of Plumbers v. B & B Mech. Serv.*, 813 F. 3d 603, 608 (6th Cir. 2015);

DiGeronimo Aggregates LLP v. Zemla, 763 F.3d 506 (6th Cir. 2014); and Metropolitan Life Ins. Co. v. McGhee, 2016 WL 4031347 (W.D. Tenn. July 26, 2016) (2016).

13. Supra, n. 1, at 704.

14. That standard is identical to the Michigan state law standard. Metropolitan Life Ins. Co. v. Kelly, supra, n. 7. The law in other jurisdictions is very similar in nature. For example, in Connecticut, under *Pickman v. Pickman*, 6 Conn. App. 271, 275 (1986), quoted in *Wisconsin Province of the Society of Jesus v. Cassem*, supra, n. 6 “Undue influence is the exercising of sufficient control over a person whose acts are brought into question in an attempt to destroy his free agency and constrain him to do something other than he would do under normal control.” Under Tennessee law, quoted in *Metropolitan Life Insurance Company v. McGhee*, supra, n. 12), undue influence is “exerting enough influence or pressure to break down a person’s will power and to overcome a person’s free agency or free will so that the person is unable to keep from doing what he or she otherwise would not have done.” Minnesota law finds undue influence when “the will of the person exercising [the influence] is substituted for the will of the testator whereby the resulting written testament represents the intent and purpose of that person and not the will of the testator, In re: Estate of Opsahl, 448 N.W. 2d 96, 100 (Minn. Ct. App. 1989), quoted in *Alliant Techsystems, Inc. v. Marks*, supra, n. 9, with the district court commenting that the definition used by the Minnesota courts is “virtually identical” to the definition used by the federal circuit courts of appeals. Under New York Law quoted in *Metropolitan Life Ins. Co. v. Giscombe*, supra, n. 1, in which the bar for establishing undue influence is high [*Metropolitan Life Ins. Co. v. Bradway*, 2011 WL 723579 at 85 (S.D.N.Y. Feb. 24, 2011)] a party alleging undue influence must show “that the influence exercised amounted to a moral coercion which restrained independent action and destroyed free agency or which, by importunity which could not be resisted, constrained the [victim] to do that which was against his free will and desire, but which he was unable to refuse or too weak to resist.” In *Washington v. Ganaway*, supra, n. 1, the district court stated in a footnote that the elements of a claim for undue influence under Texas Law are not a significant departure from the elements of a claim for undue influence developed by the Sixth Circuit. Under Texas Law, as set forth in *Rothermel v. Duncan*, 369 S.W. 2d 917, 922 (Tex. 1963), to establish a claim for undue influence, a plaintiff must prove: (i) the existence and assertion of an influence; (ii) the effective operation of such influence so as to subvert or overpower the person’s mind when executing the document; and (iii) the person would not have executed the document but for such influence. In Indiana, undue influence can be established by the particular facts of a case showing an imposition of power by one party to deprive the other party of the exercise of free will. *Ivie v. Ivie*, supra, n. 8.

15. A party asserting an undue influence challenge must show undue influence was exerted at the time that the beneficiary designation was made. *Hartford Life & Accident Insurance Co. v. Kowalski*, supra, n. 2; *Metropolitan Life Ins. Co. v. Galicia*, 2021 WL 5083439 at *4 (C.D. Cal. Nov. 1, 2021).

16. The factors were based largely on cases from state courts in the Sixth Circuit, Michigan, Ohio, and Tennessee. Similarly, in *Alliant Techsystems, Inc. v. Marks*, supra, n. 9, the standards were based upon all of the states in the Eighth Circuit, rather than simply Minnesota.

17. Supra, n. 1, at 704.

18. *Sun Life Assurance Co. v. Tinsley*, supra, n. 6; *Guardian Life Insurance Co. v. Bowes*, supra, n. 1; *Alliant Techsystems, Inc. v. Marks*, 465 F.3d 864 (8th Cir. 2012); *Hartford Life and Accident Insurance Co. v. Kowalski*, 654 F. Supp. 3d 854 (N.D. Cal.

2023); *Metropolitan Life Ins. Co. v. Austin and Brown*, 2015 WL 7770659 (E.D. Mich. December 3, 2015) and 2015 WL 8279329 (E.D. Mich. Dec. 8, 2015); *Metropolitan Life Insurance Company v. Little*, 2021 WL 23603963 (N.D. Ohio August 13, 2021); *Metropolitan Life Ins. Co. v. Hoenstine*, 2017 WL 40363019 (E.D. Mich. Sept. 13, 2017); *Plan Administration of the Chevron Corporation Retirement Restoration Plan v. Minvielle*, 2024 WL 536277 (N.D. Cal. Feb. 9, 2024). Therefore, while in general ERISA claims can be resolved on motions for summary judgment [*Sun Life Assurance Co. of Canada v. Gruber*, *supra*, n. 8], summary judgment is generally inappropriate when determining whether a decedent intended to effect a beneficiary change. *Hartford Life Ins. Co. v. Einhorn*, 497 F. Supp. 2d 398 (E.D.N.Y. 2007); *Metropolitan Life Insurance Co. v. Giscombe*, *supra*, n. 1 (same); *Krishna v. Colgate Palmolive Co.*, *supra*, n. 1 (summary judgment is “notoriously inappropriate for determinations of claims in which issues of intent, good faith, and other subjective feelings play dominant roles.”); *Metropolitan Life Ins. Co. v. Davis*, 2010 WL 3941449 at *19 (E.D. Mich. Oct. 6, 2010) (Because fact issues existed regarding undue influence, a bench trial was necessary). For an illustrative case in which there were sufficient issues of fact to avoid summary judgment, see *Washington v. Ganaway*, *supra*, n. 1.

19. Under Connecticut law, circumstantial evidence may be used to establish undue influence. *Tyler v. Tyler*, 151 Conn. Ap. 98, 93 A.3d 1179 (2017), cited in *Wisconsin Province of the Society of Jesus v. Cassem*, *supra*, n. 6. See also, *Sun Life Assurance Co. v. Tinsley*, *supra*, n. 6.

20. *Trustees of the Electricians Salary Deferral Plan v. Wright*, 688 F. 3d 922 (8th Cir. 2012); *Clark v. Board of Trustees SS Trade Association Benefits Trust Fund*, 896 F. 2d. 1366 (4th Cir. 1990).

21. 25 Am Jur. 397-398, *Duress and Undue Influence*, Section 36, quoted in *Wisconsin Province of the Society of Jesus v. Cassem*, *supra*, n. 6. The formulation of the undue influence doctrine under the Restatement (Second) of Trusts requires the “unfair persuasion of a person who, because of his relation to the victim, is justifiably assumed at the time to be one who will not act in a manner inconsistent with the victim’s welfare.”

22. *Furrow v. Hilton*, 135 So. 3d 350, 353-354 (Ala. 2008), cited in *Davis v. Davis*, *supra*, n. 6.

23. *Davis v. Adelphi Communications Corp.*, *supra*, n. 6. See also, *Sealez v. Beazley Ins. Co., Inc.*, 2016 WL 4392624 (S.D. Miss. Aug. 16, 2016) (A presumption of undue influence arises in transactions between parties in a fiduciary relationship, such as an attorney client relationship).

24. *Nichols v. Estate of Tyler*, 910 NE 2d 221, 228 (Ind. Ct. App. 2009), quoted in *Ivie v. Ivie*, *supra*, n. 8.

25. *Guardian Life Ins. Co. of America v. Bowes*, *supra*, n. 1; *Davis v. Davis*, *supra*, n. 6.

26. *Sun Life Assurance Co. of Canada v. Gruber*, *supra*, n. 8; *Metropolitan Life Ins. Co. v. Giscombe*, *supra*, n. 1. Similarly, and solely for purposes of illustration, and not to suggest what the federal common law of undue influence procedure should be, undue Alabama law, if the challenger to the designation establishes the three requirements for undue influence, then the proponent must then rebut the presumption of undue influence by showing that the “transaction was fair, just and equitable in every respect.” *Davis v. Davis*, *supra*, n. 6.

27. *Rice v. Office of Service Members Group Life Insurance*, 260 F. 3d 1240 (10th Cir. 2001); *Sun Life Assurance Co. v. Tinsley*, *supra*, n. 6; *Davis v. Davis*, *supra*, n. 6.

28. *Rice v. Office of Service Members Group Life Insurance*, *supra*, n. 27.

29. *Supra*, n. 1.

30. *Ibid*.

31. 2008 WL 11338619 (C.D. Cal. May 15, 2008).

32. *Metropolitan Life Ins. v. Galicia*, *supra*, n. 15 (Claims for fraud, undue influence, and incapacity under state law are not preempted by ERISA); *Dahood v. Noyd*, 2006 WL 8435816 (D. Mont. Oct. 10, 2006) (Claims based on undue influence are not preempted by ERISA because “relevant state law applicable to these claims does not act immediately and exclusively on an ERISA plan, nor is any ERISA plan essential to the operation of the state law.”); *Dish Network Corp. on behalf of Dish Network Corp. 401(k) Plan v. Pompa*, 2020 WL 2513671(E.D. Cal. Oct. 3, 2020) (If ERISA preempted such challenges, “there would be no recourse for fraudulent beneficiary designations in ERISA governed plans as ERISA is silent as to the procedures related to beneficiary changes.”). Cf. *Hartford Life Insurance Co. v. Kowalski*, *supra*, n. 2 (“both parties appear to presume that an undue influence claim is cognizable under ERISA, but it is unclear if that is the case.”).

33. *Jacques v. Jacques*, 2016 WL 7034513 (M.D. Fla. Dec. 1, 2016) (Undue influence is preempted with respect to policies that are ERISA plans, but state law undue influence claims apply to policies that are not ERISA plans.) Individual retirement accounts are generally not subject to ERISA, so state law applies to undue influence claims. *Harbrorson v. Sheive*, 2004 WL 627939 (W.D. N.Y. 2004).

34. *Schrefflen v. Metropolitan Life Ins. Co.*, *supra*, n. 8 (holding ERISA preempts Arizona community property law and stating it is “well settled law” that state law claims of undue influence would be preempted by ERISA.”); *Metropolitan Life Ins. Co. v. Hoenstine*, *supra*, n. 18 (“Questions regarding competing claimants to proceeds of life insurance policies due to alleged forgeries on the beneficiary designation form or any alleged exercise of undue influence are preempted by ERISA.”); *Anthem Life Ins. Co. v. Olguin*, 2007 WL 2904223 at *4 (E.D. Cal. Oct. 3, 2007); *Metropolitan Life Ins. Co. v. Pettit*, 164 F. 3d 857, 864 (4th Cir. 1998); *Davis v. Adelphi Communications, Corp.*, *supra*, n. 6; *Clark v. Board of Trustees SS Trade Association Benefit Trust*, *supra*, n. 19 (“There is little doubt that state law causes of action for improper execution of a change of beneficiary and undue influence are preempted by ERISA.”); *Gratz v. Gratz*, *supra*, n. 1; *Tinsley v. General Motors Corp.*, *supra*, n. 1; *Hendricks v. Birdou*, 2020 WL 9439391 (M.D. Fla. Sept. 8, 2020); *Variety Childrens Hospital v. Century Medical Health Plan, Inc.*, 57 F. 3d 1040 (11th Cir. 1995); *Estate of Neidich v. Neidich*, 2002 WL 31014831 (S.D.N.Y. Sept. 6, 2002); *Raff v. Travelers Insurance Co.*, 1996 WL 137310 (S.D.N.Y. 1996). In *SunLife Insurance Co. v. Tinsley*, *supra*, n. 6, the district court considered whether the exception to ERISA preemption for laws regulating insurance might apply and concluded that it did not. The court explained that rules governing a change in beneficiary have no effect upon risk-spreading and are not limited to the insurance industry. Rather, the laws of undue influence are predominantly drawn from the law of wills.

35. *Unum Life Insurance Co. of America v. Burton*, 2005 U.S. Dist. 41153, 2005 WL 3185413(M.D. Fla. Nov. 29, 2005); *Liberty Life Assurance Company of Boston v. Kennedy*, 228 F. Supp. 2d 1367(N.D. Ga. 2002), *aff’d* 358 F. 3d 1295(11th Cir. 2004); *Aetna Life Ins. Co. v. Bayonna*, 223 F. 3d 1030 (9th Cir. 2000).

36. *Advisory Committee of the MTS Systems Corporation Retirement Savings Plan and Trust v. Nelson*, 2021 WL 26469129 (D. Minn. Feb. 19, 2021), relying upon *Trustees of Electricians Salary Deferral Plan v. Wright*, *supra*, n. 19 (holding an abuse of discretion standard applicable) with respect to undue influence and mental capacity challenges).

37. Alliant Techsystems, Inc., v. Marks, *supra.*, n. 18.
38. 2009 U.S. Dist. LEXIS 22346 (N.D. W.Va. March 19, 2009). Dunlop was followed in *Boyd v. Metropolitan Life Ins. Co.*, 2010 WL 11530911 (D.S.C. June 15, 2010).
39. *Ibid.*, discussed in Pratt, “Marriage, Divorce, Death, and ERISA,” *supra.*, n. 11, p. 165.
40. 2009 U.S. Dist. LEXIS 35458 (E.D. Mich. April 27, 2009).
41. *Ibid.*, discussed in Pratt, “Marriage, Divorce, Death, and ERISA,” *supra.*, n. 11, p. 165.
42. 2015 WL 6604799 (E.D. Va. October 25, 2015).
43. 886 F.3d 998 (11th Cir. 2018).
44. *Ibid.* at 1107.
45. 2020 WL 9439374 (M.D. Fla. Nov. 2, 2020).
46. *Supra.*, n. 9.