Seventh Circuit Reminder: Employers Must Look to State Law When a Power of Attorney Is Used to Waive Spousal Benefits

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A recent decision from the United States Court of Appeals for the Seventh Circuit, *Havlik v. University of Chicago*, underscores that plan administrators must look to the governing state's power of attorney ("***POA***") laws to determine both whether a POA is valid and whether the plan must honor it. In *Havlik*, the University of Chicago rejected a beneficiary change form that would have redirected an ERISA-qualified Section 403(b) retirement plan participant's benefits from his spouse to trusts for his grandchildren. The beneficiary change required spousal consent, which the spouse's son-in-law attempted to sign under a POA. The district court and the Seventh Circuit both found the POA deficient, holding that because ERISA is silent on whether an attorney-in-fact may execute a spousal waiver, state law governs. Applying Wisconsin law, the court concluded that the state's POA statute required an express, specific grant of authority to waive survivor annuity rights—authority that was not present in the spouse's general POA over retirement accounts.

This decision is a reminder that plan administrators faced with a beneficiary change or spousal waiver executed by an agent under a POA must undertake a two-part, state law driven inquiry: (i) whether the POA itself is valid and grants the agent sufficiently specific authority to take the action in question under the governing state's POA statute, and (ii) whether the plan administrator is required to give effect to that POA based on state law.

The Seventh Circuit opinion is available here.