

## ***FOOTE Notes on Retirement***

### **Scenario**

Participant “Jack” and spouse “Jill” get divorced, and sign a community property agreement, then submit a draft domestic relations order to the administrator of Jack's plan. The administrator determines that the order is deficient and is not approved as QDRO. Subsequently, Jack dies before a final QDRO is approved.

### **Possible Solutions**

1. The Attorney can submit the community property agreement as a Domestic Relations Order and have it qualified. (Files v. ExxonMobil Pension Plan)
2. If, as in this case, the “qualification process” begins prior to the Participant’s death, subparagraph (H) of section 206(d)(3) of ERISA may allow the Alternate Payee to complete the process following the Participant’s death.
3. The 2006 Pension Protection Act may allow post-death QDROs pursuant to Section 2530.206 under certain circumstances.

Remember, a QDRO submitted after death is allowed only to enforce an already allocated and personal interest provided for in a community property settlement, the key to an after death qualification under any circumstances is to have already allocated interest.