IN THE MATTER OF THE ESTATE OF MICHAEL D. JONES, DECEASED	SUPREME COURT OF NEW JERSEY DOCKET NO. ON PETITION FOR CERTIFICATION OF FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, DOCKET NO. A-002944-21 Civil Action

BRIEF IN SUPPORT OF PETITION FOR CERTIFICATION

Thomas A. Whelihan, Esquire
Identification No.: 001811991

THE WHELIHAN LAW FIRM LLC
1999 Marlton Pike East
Suite Four
Cherry Hill, New Jersey 08003
T:(856)452-5177; F (856)452-5178
E-mail: tawlaw@comcast.net
Attorney for Shontell A. Jones, Petitioner

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GOOD FAITH CERTIFICATION OF COUNSEL

The undersigned counsel for Petitioner hereby certifies that this petition presents substantial questions for resolution by this Court, and this Petition is filed in good faith and not for purposes of delay.

Respectfully submitted,

/s Thomas A. Whelihan
Thomas A. Whelihan, Esquire
Attorney for Petitioner, Shontell Jones

Dated: 12/13/2023

PRELIMINARY STATEMENT

This case, which is one of first impression in the State of New Jersey, involves whether N.J.S.A. 3B:3-14 presumptively revoking spousal pay-on-death, or P.O.D., designations upon divorce applies to U.S. Treasury bond ("savings bond") designations. Despite the Supreme Court of the United States holding in Sveen v. Melin, 128 S. Ct. 1815 (2018), that a similar Minnesota law was not preempted by the Contracts Clause of the Constitution in the context of life insurance policies, the Appellate Division invalidated the New Jersey statute based on preemption. In doing so, the Appellate Division applied Free v. Bland, 369 U.S. 663 (1962), and Yiatchos v. Yiatchos, 376 U.S. 306 (1964), cases which consider ownership of savings bonds in states with conflicting community property laws and do not consider ramifications of a divorce or whether the law significantly interferes with contractual rights.

As the Appellate Division correctly noted, savings bonds create a contract between the bond owner and the United States, which incorporates the governing regulations. As noted in Sveen, not all laws affecting preexisting contracts violate Constitutional contract rights. From this perspective, whether the New Jersey statute impermissibly interferes with the contract between the United States and the bond owner requires the same test as in Sveen. The test considers whether the law substantially impairs the contractual relationship and, if so, whether the state law is "drawn in an appropriate and reasonable way to advance a significant and legitimate

public purpose." Id. at 1822. Here, there is no substantial impairment so the second step is not considered and the law is enforceable.

The second issue this case raises is whether broad catchall language relating to equitable distribution of all assets (except unknown assets) and the waiver of rights to inheritance applies to savings bonds when the wife reserved her rights generally with respect to the divorce settlement agreement. Here, the Appellate Division held that a general reservation of rights took priority over specific language in the agreement in which each party received all property in its possession or titled in its name as its sole and separate property and the wife agreed to waive rights to inheritance subject to amounts unpaid under the agreement. In addition, the Appellate Division failed to interpret the agreement as a whole, which was especially egregious here when the couple wrote the agreement themselves, the wife knew the decedent had the bonds and yet made no claim to them until his death, and the wife had her own savings bonds that were not identified in the contract.

Because (1) this is a case of first impression on the issues, (2) the decision below conflicts with a decision of the Supreme Court of the United States and other state courts, (3) the appellate opinion here presents an important issue of public policy that should be addressed by the Supreme Court, and (4) the decision below is a miscarriage of justice, Petitioner respectfully requests that this Petition be granted.

STATEMENT OF THE MATTER INVOLVED

This dispute raises issues concerning P.O.D. rights to a former spouse with respect to U.S. Treasury (or savings) bonds. The relevant facts are straightforward.

Jeanine and Michael were married in 1990, separated on April 8, 2016, and divorced on January 17, 2018. While their divorce pended, the parties entered into a divorce settlement agreement (the "DSA") that was eventually incorporated into a final judgment of divorce. (SCA6.) In re Estate of Jones, 2023 N.J. Super. LEXIS 113, 2 (App. Div. 2023). The parties had been represented by counsel but eventually each disengaged their attorney and negotiated the terms of the DSA themselves. The DSA, executed by the parties on October 19, 2017, in relevant part, provided,

> **WHEREAS**, the Wife will not waive, release[], and relinquish[] any actual or potential right, claim, or cause of action against the other party, including but not limited to asserting a claim against the estate of the other party or to act as a personal representative of that estate, except as otherwise provided in this agreement or arising hereunder.
>
> *** * ***
>
> **SECTION I. EQUITABLE DISTRIBUTION**
>
> 1. **Property Division.** For an equitable division of marital property, assignment of non-marital property, and as for the payment of marital debts, the parties shall make the transfers, conveyances, and assignments in accordance with the terms, provisions, covenants as follows below. Any marital asset not listed below belongs to the party who has it currently in their possession.
>
> **Marital Home or Other Property:** The parties have a home at 45 Scenic Drive, Sicklerville, New Jersey 08081 (hereinafter referred to as the "Marital Residence"). This property is subject to a mortgage (hereinafter referred to as the "Marital Residence Mortgage"). Upon full execution of this agreement, the Husband shall remain, as well as have sole possession (title) of the Marital Residence. . . .

* * *

Husband's Retirement Account: The Husband shall have exclusive use, possession, and ownership of any 401k, IRA, or other retirement account listed in his name, including his social security benefits. The Wife will forever relinquish any right she may have to any of the accounts specified in this paragraph only if the Husband has fulfilled his financial obligation by December 31, 2020.

*** * ***

Husband's Checking Accounts: Husband shall have exclusive use, possession, and ownership and shall be the sole owner of any bank account listed in his respective name, including, but not limited to, checking accounts, savings accounts, or money market accounts. The Wife will forever relinquish any right she may have to any of the accounts specified in this paragraph only if the Husband has fulfilled his financial obligation by December 31, 2020.

* * *

Personal Property:

Husband shall have exclusive use, possession, and ownership of all items titled in his name solely including cash on hand, cash in bank, all personal affects, clothing, grooming aids, jewelry and any furnishings currently in his possession.

Wife shall have exclusive use, possession, and ownership of all items titled in her name solely including cash on hand, cash in banks, all personal affects, clothing, grooming aids, and jewelry.

* * *

1. **Division of Liability/Debts.** Any marital liability not listed below belongs to the party who has it currently in their possession or has the debt titled solely in their name.

* * *

SECTION II. SEPARATE PROPERTY

Except as otherwise provided herein, the parties agree that whatever property he or she now owns or may hereafter have or acquire in their respective names shall henceforth be considered their sole and separate properties, provided same has been disclosed to the other party. To the extent that an asset, whether same be real, personal, intangible, or

> tangible be discovered later, the Court should reserve jurisdiction to distribute same between the parties.
>
> * * *
>
> **SECTION VI. GENERAL PROVISIONS**
>
> * * *
>
> **Release of All Claims:** Each party, except as otherwise provided in this Agreement, releases the other from all claims, liabilities, debts, obligations, actions, and causes of action of every kind, whether known or unknown. However, neither party is relieved from any obligation under this agreement, or under any document executed pursuant to this agreement, or under any judgment or order issued incident to this agreement.
>
> **Waive of Rights to Other Party's Estate:** The Wife will waive any and all rights to inherit part of the Estate of the Husband at his death, only if the Husband has fulfilled his financial obligations on or by December 31, 2020.
>
> * * * [(Da058.)]

Although the savings bonds are never mentioned by name in the DSA, they were titled in Michael's name and remained in his possession without dispute for well over three years following the parties' divorce. Under the terms of the DSA, Michael was to pay Jeanine a total of $200,000 by December 31, 2020. (SCA7.)

On November 16, 2019, Michael died after a brief illness. Following his death, Jeanine went into Michael's home, removed the bonds, and began redeeming the bonds on November 25, 2019, ultimately receiving $77,864.40 for the bonds.

Although his payments were current, he died before paying the full $200,000 to Jeanine. Jeanine filed a creditor claim against the estate for amounts still owed

under the DSA. The Estate rejected these claims, alleging that she had been paid in full, in part, by her redemption of Michael's savings bonds. (Ibid.)

The trial court found in favor of the Estate, and applied the proceeds of the savings bonds towards the balance remaining on the $200,000. (SCA8.) The Appellate Division reversed, finding that the DSA did not resolve the savings bonds because the bonds were not identified specifically and Jeanine had broadly reserved her rights under the DSA. In addition, the Treasury regulations permitted reissuance pursuant to a divorce decree but required the bonds to be reissued to effectuate any change in P.O.D. beneficiary. Finally, it held that federal law preempted N.J.S.A. 3B:3-14, which presumptively revokes spousal P.O.D. designations upon divorce.

The Estate filed this Petition for Certification.

QUESTION PRESENTED

Whether the Appellate Division overstepped its authority when it determined that the DSA did not intend to resolve all financial obligations between the couple, including the savings bonds.

Whether 31 C.F.R. 360.22(a) requires reissuance of a savings bond to enforce payment in accordance with a divorce settlement agreement.

Whether the designation of a spouse as the pay-on-death beneficiary of a federal savings bond is nullified upon divorce in New Jersey pursuant to N.J.S.A. 3B:3-14 without language to the contrary in the divorce settlement agreement.

ERRORS COMPLAINED OF AND COMMENTS WITH RESPECT TO THE APPELLATE DIVISION OPINION

In its holding, the Appellate Division reversed because it "disagree[d] with the judge's legal determinations regarding the interpretation of the DSA as well as the application of state law to the disposition of federal savings bonds in the circumstance of this case." (SCA10.) It also held that 31 C.F.R. 360.22 and 353.22 require reissuance of the bonds to remove a former spouse as P.O.D. beneficiary. The Appellate Division erred because (1) interpretation of the DSA as a whole and in light of New Jersey law establishes that the parties intended the DSA to cover disposition of the savings bonds; (2) 31 C.F.R. 360.22 does not require reissuance of the bonds to enforce the terms of a property settlement agreement incorporated into a divorce decree; and (3) N.J.S.A. 3B:3-14 is not preempted by federal law.

A. The Appellate Division overstepped its authority when it determined that the DSA did not intend to resolve Jeanine's rights with respect to the Treasury bonds.

Here, the Appellate Division erroneously concluded that "the DSA contained no provision identifying the bonds or divesting Jeanine's rights in them." It held that the Law Division's basis for crediting the bond proceeds against amounts owed under the DSA were based on the trial court's erroneously finding "that Michael intended to remove Jeanine as a beneficiary after they divorced as well as the mistaken belief that 'all issues ha[d] been resolved' by the DSA."

Specifically, the Appellate Division found that the release provision in the DSA did not apply to claims that had been reserved elsewhere in the agreement and that Jeanine reserved all claims, not just her claims relating to Michael's obligations under the DSA:

> **WHEREAS**, the wife will not waive, release[], and relinquish[] any actual or potential right, claim, or cause of action against the other party, including but not limited to asserting a claim against the estate of the other party or to act as a personal representative of that estate, except as otherwise provided in this agreement or arising hereunder.

Regardless of whether this is a correct interpretation of this waiver language, this analysis has several significant flaws.

Although the Appellate Division recognizes that the DSA is governed by contract law, it failed to perform a proper contract analysis by considering the intent of the parties as set forth in the contract as a whole and the governing laws.

1. The Appellate Division Failed to Discern and Implement the Intent of the Parties.

Here, the Appellate Division failed to discern and implement the intent of the parties at the time of the DSA, which the Court has held is quite liberal in the context of divorce settlement agreements. Quinn v. Quinn, 225 N.J. 34, 45 (2016) (citation omitted). Instead of focusing on an alleged reservation of Jeanine's rights with respect to Michael's estate, the panel should have considered the DSA as a whole and discerned what the parties intended at that time. "[W]hen the intent of the parties is plain and the language is clear and unambiguous, a court must enforce the

agreement as written, unless doing so would lead to an absurd result." Ibid. (citation omitted). If an ambiguity exists, "a hearing may be necessary to discern the intent of the parties at the time of the agreement was entered into and to implement that intent." Ibid. In addition, the Appellate Division failed to give priority to more specific language in the DSA over less specific language. Burley v. Prudential Ins. Co., 251 N.J. Super. 493, 500 (App. Div. 1991) (citing 2E. Farnsworth on Contracts, § 7.11, at 263-264 (1990); see George M. Brewster & Son v. Catalytic Const. Co., 17 N.J. 20, 35 (1954)).

Here, instead of considering the intent of the parties, especially given the agreement was not drafted by attorneys and had obvious inconsistencies, the Appellate Division narrowly focused on a provision whereby Jeanine broadly reserved her rights with respect to the DSA. By the Appellate Court's interpretation, Jeanine could essentially claim ownership of any property not specifically listed in the DSA that was possessed by Michael at the time the DSA was entered. That clearly was not the intent of this paragraph.

Besides, this analysis ignores the remainder of the agreement which makes clear that the parties intended the DSA to fully distribute the assets of the parties. Section 1 (Equitable Distribution) of the DSA sets forth that it is intended to outline the transfers, conveyances, and assignments necessary to effectuate the equitable distribution. This provision also includes a broad catchall that specified, "[a]ny

marital asset not listed below belongs to the party who has it currently in their possession." The DSA then allocates the assets between the parties in the categories of: marital home, vehicles, retirement accounts, and checking, savings and money market accounts.

As a second catchall, the DSA Personal Property provision provides:

> Husband shall have exclusive use, possession, and ownership of all items titled in his name solely including cash on hand, cash in bank, all personal affects, clothing, grooming aids, jewelry and any furnishings currently in his possession.
>
> Wife shall have exclusive use, possession, and ownership of all items titled in her name solely including cash on hand, cash in banks, all personal affects, clothing, grooming aids, and jewelry.

This catchall is not meant to be an exhaustive list of personal property but rather examples of types of personal property each might possess and that each shall continue to possess and own following execution of the DSA.

Last, if an asset is later discovered, the DSA contains a provision reserving the court's jurisdiction to determine distribution of this asset:

> **SECTION II. SEPARATE PROPERTY**
>
> Except as otherwise provided herein, the parties agree that whatever property he or she now owns or may hereafter have or acquire in their respective names shall henceforth be considered their sole and separate properties, **provided same has been disclosed to the other party. To the extent that an asset, whether same be real, personal, intangible, or tangible be discovered later, the Court should reserve jurisdiction to distribute same between the parties.**
>
> [(Emphasis added.)]

Thus, the DSA contains not one but two provisions that intend to capture all other personal property not identified by name in the DSA. The outcome under each of these provisions is the same: the person who possesses that property at the time of the execution of the DSA will continue to possess and own that property after the execution of the DSA, as their sole and separate property. The Appellate Division has not cited one authority to support how the savings bonds (if not deemed a retirement or savings account) are not distributed via these catchall provisions.

In addition, the DSA reserves the court's jurisdiction over later found assets. It does not reserve the court's jurisdiction over the savings bonds – presumably because the DSA covers their equitable distribution.

This notion that the savings bonds were a settled matter is also supported by the parties' actions. Jeanine admitted in her deposition that both she and the Michael invested in savings bonds. She admitted that Michael had started purchasing savings bonds more than 34 years earlier – well before their marriage. She also described where Michael kept them in their marital residence. (Da024.) Despite this knowledge and Michael's uninterrupted possession of his savings bonds for more than three and a half years (from the time of their separation until death), Jeanine never protested to his possession or ownership of the same. She took no actions to prevent him from modifying the beneficiary or even redeeming the savings bonds.

Furthermore, the reservation of rights language that the Appellate Division relies on is less specific than the language governing the intent that the DSA govern the distribution of all marital assets. Therefore, under traditional rules of contract construction, the distribution language should prevail.

As to the P.O.D. designation, Jeanine waived all rights to inherit from Michael's estate, except to the extent required to fulfill his DSA obligations:

> **Waiver of Rights to Other Party's Estate:** The Wife will waive any and all rights to inherit part of the Estate of the Husband at his death, only if the Husband has fulfilled his financial obligations on or by December 31, 2020.

So even if federal law would give her ownership of the bonds upon Michael's death, she was contractually obligated to waive her right to them. Jeanine's waiver of her rights to the savings bonds in no way is an attempt to preempt Federal law governing savings bonds because it does not attempt to change the relationship between the bond owner and the United States but rather is an agreement between Michael and Jeanine to waive her rights to any inheritance, including to his savings bonds. For these reasons, a waiver of the right of inheritance with respect to savings bonds has been upheld in other jurisdictions. See, e.g., Meer v. Garvey[1], 212 So.2d 97, 98 (Fla. Dist. Ct. App. 1968). See, also, Smalley v. Smalley, 399 S.W.3d 631, 640 (Tex.

[1] The Appellate Division distinguished Meer, see SCA14, but that distinction is based on the faulty DSA interpretation.

App. 2013)(where an appellate court held that a surviving spouse waived her P.O.D. interest in savings bonds under the divorce decree that stated she "is divested of all right, title, interest, and claim in and to" the savings bonds).

Finally, it is unclear how the Appellate Division ended up where it did. Essentially, the Appellate Division took a marital asset and allowed one party to have it to the exclusion of the other without any factual findings as to what the parties intended or what is equitable. To the extent the court believed the savings bonds were not covered by the DSA, it should have remanded to the family court for the savings bonds' equitable distribution. Although the DSA does not address this specific situation (likely because it was intended to cover the distribution of all marital assets), as discussed above, it does reserve the family court's jurisdiction over late-found assets. Thus, if this were a later-found asset, which no one claims, then it would be under the court's jurisdiction to determine distribution equitable.

1. The Appellate Division Failed to Properly Construe the DSA.

In addition to failing to discern and implement the intent of the parties, the Appellate Division failed to interpret the DSA in light of controlling state law, including N.J.S.A. 3B:3-14, which essentially provides a gap filler, or default interpretative language, to divorce settlement agreements if they fail to address P.O.D. designations naming a spouse. In relevant part, N.J.S.A. 3B:3-14 provides,

> Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate

> made between the divorced individuals before or after the marriage, divorce or annulment, a divorce or annulment:
>
> (1) revokes any revocable:
>
> (a) dispositions or appointment of property made by a divorced individual to his former spouse in a governing instrument . . .

The DSA contains no language naming Jeanine as a P.O.D. beneficiary to the savings bonds. Thus, if the Court deems the waiver language insufficient to return the savings bonds' proceeds to the Estate, the interpretation of the DSA in light of N.J.S.A. 3B:3-14 would revoke Jeanine as the P.O.D. beneficiary of the bonds.

B. The Appellate Division Erred in its Analysis of 31 C.F.R. 360.22: Reissue is Not Necessary to Remove a P.O.D. Beneficiary Pursuant to the DSA.

Pursuant to Treasury regulations, as relates to payment or reissuance of Treasury bonds, the Department of Treasury is required to give effect to terms set forth under a property settlement agreement incorporated into a final judgment of divorce. Although it permits the reissuance of bonds when such an agreement modifies the ownership or beneficiary of such bonds, the statutory language is merely permissive, not required. Specifically, 31 C.F.R. 360.22 provides,

> § 360.22 Payment or reissue pursuant to divorce.
>
> (a) Divorce. (1) The Department of Treasury **will recognize a divorce decree** that ratifies or confirms a property settlement agreement disposing of bonds or that otherwise settles the interests of the parties in a bond. Reissue of a savings bond **may** be made to eliminate the name of one spouse as owner, coowner, or beneficiary or to substitute the name of one spouse for that of the other spouse as owner, coowner, or beneficiary pursuant to the decree. * * * [(Emphasis added.)]

> (b) Date for determining rights. When payment or reissue under this section is to be made, the rights of the parties will be those existing under the regulations current at the time of the entry of the final judgment, decree, or court order.

Here, the Appellate Division erroneously concluded that these regulations require that the bonds be reissued to effectuate the agreement in the DSA. That conclusion is not supported by the plain language of 31 C.F.R. 360.22. The regulation merely states that the Department of Treasury "will recognize" a divorce settlement agreement incorporated into a final judgment of divorce and that the "reissue of a savings bond may be made to eliminate the name of one spouse as owner, coowner, or beneficiary[.]" Moreover, the regulation applies to "payment or reissuance." If the regulation were to be interpreted as claimed by the Appellate Division, then payment of bonds would not be addressed as once the bond was reissued in accordance with the DSA, it would be given no further special treatment.

In addition, the regulation states that the "rights of the parties will be those existing under the regulations current at the time of the entry of the final judgment of divorce." Thus, all rights can be established at that point in time.

Thus, the Appellate Division's interpretation of 31 C.F.R. 360.22 is flawed and should be corrected.

C. The Appellate Division Erred by Holding that Federal Savings Bond Law Preempts N.J.S.A. 3B:3-14.

The Appellate Court erred in holding that N.J.S.A. 3B:3-14 is preempted by Federal law governing the ownership of savings bonds because it failed to apply the

Supreme Court's opinion in Sveen v. Melin, 138 S. Ct. 1815 (2018). There, the issue was whether Minnesota law could retroactively presumptively revoke a spouse named as a P.O.D. beneficiary of a life insurance policy upon divorce and whether the law violated the decedent's right to contract as guaranteed under the United States' Constitution. The Supreme Court reasoned that it did not:

> The Contracts Clause restricts the power of States to disrupt contractual arrangements. It provides that "[n]o state shall . . . pass any . . . Law impairing the Obligation of Contracts." U. S. Const., Art. I, §10, cl. 1. The origins of the Clause lie in legislation enacted after the Revolutionary War to relieve debtors of their obligations to creditors. But the Clause applies to any kind of contract. That includes, as here, an insurance policy.
>
> At the same time, not all laws affecting pre-existing contracts violate the Clause. To determine when such a law crosses the constitutional line, this Court has long applied a two-step test. The threshold issue is whether the state law has "operated as a substantial impairment of a contractual relationship." In answering that question, the Court has considered the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights. If such factors show a substantial impairment, the inquiry turns to the means and ends of the legislation. In particular, the Court has asked whether the state law is drawn in an "appropriate" and "reasonable" way to advance "a significant and legitimate public purpose." Sveen at 1821-22.

In applying this law in the context of a life insurance designation, the Supreme Court held that although the revocation of the designation is a significant change, it does not substantially impair the contractual relationship for three reasons: (1) the statute is intended to reflect the policyholder's intent; (2) the law is unlikely to disturb the policyholder's expectations because the divorce court could have done

the same; and (3) the law is merely a default if the divorce judgment is silent on the issue. Because this threshold test was not met, the Court's analysis ended.

Here, the issue is nearly identical. As correctly interpreted by the Appellate Division, "[a] savings bond is a contract between the United States and the bond owner, and Treasury regulations are incorporated into the bond contract." (Slip op. at 17 (citing Laturner v. United States, 933 F.3d 1354, 1357 (Fed. Cir. 2019)). Thus, the issue is whether a state law governing the effect of divorce upon P.O.D. designations violates the Contracts Clause of the Constitution with respect to the contractual relationship between the United States and Michael. Here, the facts are identical to Sveen and support application of the law as to the savings bonds.

Moreover, this conclusion supports the general presumption allowing states to govern equitable distribution in a divorce.

> Federal preemption of state law is not favored. This is particularly true in areas of law traditionally dominated by the individual states. In an area that has been traditionally occupied by the states, the court must assume that the prerogatives of the states were not to be superseded by a federal law unless it is the clear and manifest purpose of Congress. Indeed, for preemption to occur in a field traditionally occupied by the states, there must be a "sharp" conflict between state law and federal policy.

Witco Corp. v. Beekhuis, 38 F.3d 682, 687 (3rd Cir. 1994) (citations omitted).

Application of the law is also consistent with the Treasury regulation that recognizes the rights and interests in bonds as established through divorce decrees.

Last, the two cases relied on by the Appellate Division lack applicability to these facts. Both deal with rights of bond owner in states with conflicting community property laws and neither address the Treasury's recognition of divorce decrees.

In the first case, Free v. Bland, 369 U.S. 663 (1962), the issue was whether a couple living in a community property state could purchase savings bonds as joint owners with the right of survivorship to the exclusion of the decedent's child from a prior marriage, who was entitled to inherit from the decedent. The Supreme Court of the United States opined that state law could not take away the couple's right under federal law to own savings bonds jointly with the right of survivorship. Although the Appellate Division was correct in opining that "Federal courts consistently applied Free beyond the facts presented in that case," Free still does not give any insight as to the Treasury's application of 31 C.F.R. 360.22, recognizing final orders of divorce in the context of payment of savings bonds.

In the second case, Yiatchos v. Yiatchos, 376 U.S. 406 (1964), the relevant issue was whether a spouse could use community property assets to purchase savings bonds in his sole name with his brother as the beneficiary and whether the decedent could change this beneficiary designation through his will. There, the Court held that the beneficiary designation would prevail provided that the wife knew and consented to the purchase of the savings bonds with the decedent's brother named as the beneficiary (i.e., there was no fraud in the purchase of the bonds with marital assets),

and such disposition would be subject to any debts as provided under state law. Again, this case does not give any insight into the application of 31 C.F.R. 360.22.

Thus, neither case involves Treasury's application of its regulations acknowledging divorce judgments in the payment and reissuance of savings bonds.

REASONS WHY CERTIFICATION SHOULD BE ALLOWED

This Court should grant Petitioner's application for certification as it meets the grounds set forth in Rule 2:12-4. First, this matter raises an important question of general public importance that has not been addressed by this court previously – application of N.J.S.A. 3B:3-14 in the context of savings bonds. Because of the commonality of savings bonds and divorce, this issue is likely to reoccur.

Second, the decision conflicts with Sveen, which enforces similar laws in context of insurance policies. In addition, the panel's reliance on Free is inconsistent with Meer and Smalley. In fact, the Smalley court explicitly rejected Free:

> The Free court held that Texas community-property law is preempted to the extent that it prohibits a married couple from taking advantages of the survivorship rights for United States Savings Bonds afforded in applicable federal regulations. The Free case did not involve a divorce decree or an alleged waiver by a former spouse in a divorce decree. In addition, the Free court relied upon the regulation stating that 'the Department of Treasury will not recognize . . . a judicial determination that impairs the rights of survivorship conferred by these regulations upon a co-owner or beneficiary.' But, the federal regulations regarding savings bonds provide that 'the Department of the Treasury will recognize a divorce decree that ratifies or confirms a property settlement agreement disposing of bonds or that otherwise settles the interests of the parties in a bond. Reissue of a savings bond may be made to eliminate the name of one spouse as owner, co-owner, or beneficiary,

> or to substitute the name of one spouse for that of the other spouse as owner, co-owner, or beneficiary pursuant to the decree. Citing this regulation, among others, the Free court stated: 'While affording purchasers of bonds the opportunity to choose a survivorship provision which must be recognized by the States, the regulations neither insulate the purchasers from all claims regarding ownership nor immunize the bonds from execution in satisfaction of a judgment. Thus, the case under review does not fall within the holding of Free, and the regulations upon which [the ex-wife] relies do not conflict with enforcement of the alleged waiver by [the ex- wife] of her rights and interest as 'payable on death' beneficiary of the Savings Bonds.

Smalley at 640.

Third, this matter also calls for an exercise of this Court's supervisory function. As discussed above, the Appellate Division failed to discern the intent of the parties, especially as here where the parties wrote it themselves. Last, the Interests of Justice compel this Court's review of the decision below. As a result of the faulty opinion, the two daughters of Michael are deprived of their right to their father's savings bonds, without any factual determinations as to what the parties intended. In addition, Jeanine has received more than her share of the marital estate.

CONCLUSION

For the reasons set forth above, Petitioner respectfully requests that this Court grant Certification and review the herein matter.

THE WHELIHAN LAW FIRM LLC
Attorneys for Plaintiff-Petitioner

Date: December 13, 2023

By: /s Thomas A. Whelihan
THOMAS A. WHELIHAN