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June 18, 2024

Honorable Chief Justice and
Associate Justices of the
Supreme Court of New Jersey
Post Office Box 970
Trenton, New Jersey 08625

Re: **IMO THE ESTATE OF MICHAEL D. JONES, DECEASED**
**Docket No. 088877**

Your Honors:

Please accept this letter memorandum as respondent Jeanine Jones' supplemental brief to the Court.

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# PRINCIPAL FACTS

## The Divorce Settlement Agreement

Jeanine and Michael Jones married in 1990 and divorced on January 18, 2018. They entered into a Divorce Settlement Agreement ("DSA") incorporated into a Judgment of Divorce under FM-08-408-18. App. Div. Op. at 4.

Under the DSA, Michael agreed to pay Jeanine $200,000 per a schedule the agreement prescribed. The DSA provided that if Michael predeceased Jeanine, "the proceeds from [Michael's] estate will compensate [Jeanine] for the remainder of the $200,000[ ] in the event there is an unpaid balance." The DSA provided also,

- "Any marital asset not listed ... belong[ed] to the party who ha[d] it ... in their possession" at the time of the DSA's execution. The DSA granted each party "exclusive use, possession, and ownership of all items titled in [their respective name] solely including cash on hand, [and] cash in banks."
- Each spouse would retain "exclusive use, possession, and ownership of any 401k, IRA, or other retirement account listed in [his or her] name," and that each would forever relinquish any right to the other's accounts, except that Jeanine's interest was

relinquished only if Michael "ha[d] fulfilled his financial obligation[s] by December 31, 2020."

- Each spouse would retain "exclusive use, possession, and ownership and shall be the sole owner of any bank account listed in [his or her] name, including, but not limited to, checking accounts, savings accounts, or money market accounts," but Michael's promise was again conditioned on whether he "ha[d] fulfilled his financial obligation by December 31, 2020."
- "Each party, except as otherwise provided in th[e] agreement, release[d] the other from all claims, liabilities, debts, obligations, actions, and causes of action of every kind, whether known or unknown."
- Jeanine "w[ould] not waive, release[ ], [or] relinquish[ ] any actual or potential right, claim, or cause of action against [Michael], including but not limited to asserting a claim against ... [Michael's] estate ... except as otherwise provided in th[e DSA] or arising hereunder[.]" Jeanine would waive "any and all rights to inherit part of [Michael's estate] at his death, only if [Michael] ha[d] fulfilled his financial obligation on or by December 31, 2020."

**What Happened After the Divorce Judgment**

Michael made payments to Jeanine, in accordance with the DSA, totaling $110,000. Michael then died on November 16, 2019.

Shontell Jones, plaintiff and petitioner here, was appointed executor of her father Michael's estate. She filed this action in the Chancery court, seeking various relief against Jeanine.

Jeanine opposed and filed a creditor's claim against the estate, seeking $90,000 that she contended remained due to her under the DSA.

The estate denied Jeanine's claim, charging that Jeanine had received (among other alleged credits not relevant here) $77,864.40 from redeeming a number of U.S. Series EE Bonds of which Michael was the registered owner and Jeanine the POD beneficiary. The estate argued that Jeanine's receipt of the bond funds was a credit toward the $200,000 obligation that Michael owed to Jeanine under the DSA.

Jeanine denied that the money she redeemed from the bonds was a credit towards Michael's obligation to her under the DSA. Jeanine said that under federal law, she became the owner of the bonds immediately and automatically upon Michael's death, as the registered beneficiary. The $77,864.40 she received from redeeming the bonds was money that the United States government paid to her as owner of the bonds, pursuant to the bond contract and

governing federal law. The $77,864.40 was not money that either Michael or his estate paid.

Granting summary judgment for the estate on the issue, the trial judge ruled that the $77,864.40 was a credit against the balance that Michael still owed to Jeanine under the DSA at the time of his death. The judge agreed with the estate that Jeanine's beneficiary designation under the bonds was revoked automatically by virtue of N.J.S.A. 3B:3-14, which provided for automatic revocation of such beneficiary designations of spouses upon divorce.[1]

**The Appellate Division's Decision**

Jeanine appealed and the Appellate Division reversed, ruling, "we agree with Jeanine's contention that the judge erred in applying state law to decide the bonds' disposition because state law was preempted by controlling federal law." "A savings bond is a contract between the United States and the bond owner, and Treasury regulations are incorporated into the bond contract," the court noted. "In Free v. Bland, 369 U.S. 663 (1962), the United States Supreme Court held that 'Treasury Regulations creating a right of survivorship in United States

[1] The statute 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 ...."

Savings Bonds pre-empt[ed] any inconsistent Texas community property law by virtue of the Supremacy Clause, Article VI, Clause 2, of the Constitution.'" Free, supra, 369 U.S. 664; see Treasurer of New Jersey v. U.S. Dep't of Treasury, 684 F.3d 382, 406 (3d Cir. 2012) ("[W]here Congress has delegated the authority to regulate a particular field to an administrative agency, the agency's regulations issued pursuant to that authority have no less preemptive effect than federal statutes"). The court ruled,

> In [Free], Treasury regulations provided that when one bond owner died, the surviving co-owner (there, the decedent's husband) became the sole owner of the bond. [369 U.S.] at 664-65, 82 S.Ct. 1089. Under Texas state community property laws, however, the principal beneficiary under the decedent's will (there, the decedent's son) was entitled to a one-half interest in the bonds—despite not being a co-owner of the bond under Treasury regulations. [Ibid.] The Court held that the state law was preempted because it prevented bond owners "from taking advantage of the survivorship provisions" of the Treasury regulations. Id. at 669-70 [82 S.Ct. 1089]. The Court reasoned that "Federal law of course governs the interpretation of the nature of the rights and obligations created by the Government bonds," [Ibid.] (*quoting Bank of Am. Tr. & Sav. Ass'n v. Parnell, 352 U.S. 29, 34, 77 S.Ct. 119, 1 L.Ed.2d 93 (1956)*), and a state may not "fail[ ] to give effect to a term or condition under which a federal bond is issued," id. at 669 [82 S.Ct. 1089]. In other words, Treasury regulations conferred a right on bond holders which Texas state law impermissibly restricted.

The Appellate Division also cited Yiatchos v. Yiatchos, 376 U.S. 306 (1964), where the Supreme Court applied Free to bonds held in beneficiary form, ruling that "survivorship provisions of the federal regulations must control, preempting, if necessary, inconsistent state law which interferes with the

legitimate exercise of the Federal Government's power to borrow money." Yiatchos, supra, 376 U.S. 306. Absent evidence of fraud, breach of trust, or other wrongful conversion of property, the supreme federal law governed the disposition of the bonds, therefore.

With regard to N.J.S.A. 3B:3-14 upon which the trial judge relied, the Appellate Division agreed that the New Jersey statute provided for automatic revocation of Jeanine's beneficiary designation under the bonds upon entry of the couple's divorce, but said that this result conflicted with the federal law governing the bonds, and this supreme federal law preempted the New Jersey statute purporting to provide a different result. There was no automatic revocation of Jeanine as the registered beneficiary under the governing federal law. Because Michael did not remove Jeanine as the beneficiary of the bonds and there was nothing in the couple's DSA that provided for this, Jeanine remained the beneficiary of the bonds following divorce and through the time of Michael's death, then became owner of the bonds automatically upon death of the owner, Michael. Jeanine then lawfully redeemed the bonds as owner per the governing federal law. The Appellate Division ruled,

> We are convinced that under Free and Yiatchos, the regulations governing bond registration and ownership as well as the modification requirements pursuant to recognized judicial proceedings conflict with the inconsistent provisions of N.J.S.A. 3B:3-14, which would automatically revoke the bonds' POD designation and disposition upon divorce. As a result, the federal

> regulations preempt N.J.S.A. 3B:3-14 under the circumstances of this case. A contrary result would fail "to give effect to a term or condition under which a federal bond is issued." Free, supra, 369 U.S. 669. Under 31 C.F.R. § 353.70(c)(1), a beneficiary's bond ownership is established upon proof of death of the owner. Therefore, once Michael died, in the absence of fraud or breach of trust, neither of which is alleged here,8 Jeanine became the sole and absolute owner of the bonds. See ibid. By determining that Jeanine's beneficiary designation was automatically revoked under N.J.S.A. 3B:3-14 by virtue of the divorce, the judge "fail[ed] to give effect" to Jeanine's federal ownership rights and "rendered the award of title meaningless." Free, supra, 369 U.S. 669.

The trial judge erred by failing to apply the federal law over the contrary New Jersey statute. "Under the applicable federal regulations, Jeanine became the sole owner of the bonds upon Michael's death, and she was entitled to payment as the sole owner," the Appellate Division noted. "In the absence of any allegation of fraud or breach of trust, application of N.J.S.A. 3B:3-14 in this case, which allowed the estate to improperly avoid the consequences of the bonds' beneficiary registration, conflicts with the governing federal regulations under Free and Yiatchos and is therefore preempted."

The Appellate Division stressed that nothing in the parties' DSA "warrants a contrary conclusion," moreover. The estate argued that Michael intended to remove Jeanine as beneficiary following the couple's divorce, but there was no evidence of any sort that Michael intended to remove Jeanine as beneficiary let alone took steps to do so. There certainly was no agreement between the couples about this. The DSA did not even reference the bonds let alone provide that the

couple agreed that Jeanine would be removed as beneficiary of them. Moreover, Jeanine did not relinquish any and all claims; rather, the DSA provided that Jeanine "will not waive, release[ ], [or] relinquish[ ] any actual or potential right, claim, or cause of action against [Michael], including but not limited to asserting a claim against ... [Michael's] estate ... except as otherwise provided in th[e DSA] or arising hereunder."

For those reasons, the Appellate Division reversed the trial judge's grant of summary judgment for the estate.

## ARGUMENT

### A. The Court should clarify that N.J.S.A. 3B:3-14 is not preempted by federal law because the New Jersey statute recognizes an exception for "the express terms of a governing instrument…"

The Court should strive to construe a statute to avoid a constitutional problem, Whirlpool Properties, Inc. v. Dir., Div. of Taxation, 208 N.J. 141, 172 (2011).

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 . . .” N.J.S.A. 3B:3-14(a) (emphasis added).

The Court should construe the statute as providing that the “express terms of a governing instrument” include the federal rules and regulations governing federally issued bonds like the Series EE bonds at issue in this case. N.J.S.A. 3B:1-1 provides that “governing instrument” includes an “account with the designation ‘pay on death’ (POD)” and a “security registered in beneficiary form with the designation ‘pay on death’ (POD)[.]” For purposes of the revocation rule of N.J.S.A. 3B:3-14, “‘governing instrument’ means a governing instrument executed by the divorced individual before the divorce or annulment…” N.J.S.A. 3B:3-14(b)(2). The “express terms” of the governing instrument in question here include the "terms and conditions" of Series EE savings bonds as set forth by federal law in Part 353 of Title 31 of the Code of Federal Regulations. U.S. Dep't of the Treasury, Savings Bond Regulations, Treasury Direct, https://www.treasurydirect.gov/laws-and-regulations/savings-bond-regulations (last visited July 18, 2023); 31 C.F.R. § 353.0 (amended 2005); Laturner v. United States, 933 F.3d 1354, 1357 (Fed. Cir. 2019) ("A savings bond is a contract between the United States and the bond owner, and Treasury regulations are incorporated into the bond contract.")

The New Jersey statute is not preempted by federal law governing bonds, therefore, because the statute's automatic revocation provision does not apply where the express terms of a particular governing instrument provide otherwise. The automatic revocation does not apply to the Series EE bonds here because there are express terms governing these instruments that provide otherwise – *i.e.*, that ownership and beneficiary designations can be changed only as the federal rules and regulations prescribe, and that when the registered owner of a bond dies, ownership of the bond immediately and automatically goes to the registered beneficiary.

The Estate's contention that the New Jersey statute automatically revoked, upon divorce, Jeanine's beneficiary designation under the bonds is incorrect, we submit, because this construction of the New Jersey statute disregards its "Except" clause and fails to construe the statute in a manner to avoid a constitutional infirmity. The Appellate Division likewise erred, we submit, in its reasoning – by construing the statute in a manner that disregards the "Except" clause and creates an unnecessary conflict between state and federal law. The trial court's ruling that N.J.S.A. 3B:3-14 automatically revoked Jeanine as beneficiary also failed to apply the statute's "Except" clause, failed to construe the statute in a manner to avoid a constitutional infirmity, and disregarded as

well that the conflicting federal law preempted any contrary result that state law purports to provide.

### B. If the Court concludes that applying the New Jersey statute did provide for automatic revocation of Jeanine's beneficiary designation under the bonds, that result under state law is preempted by the supreme federal law governing the bonds.

"A savings bond is a contract between the United States and the bond owner, and Treasury regulations are incorporated into the bond contract." Laturner, supra, 933 F.3d 1357. These treasury regulations governing the "terms and conditions" of Series EE savings bonds are set forth in Part 353 of Title 31 of the Code of Federal Regulations. U.S. Dep't of the Treasury, Savings Bond Regulations, Treasury Direct, https://www.treasurydirect.gov/laws-and-regulations/savings-bond-regulations (last visited July 18, 2023); 31 C.F.R. § 353.0 (amended 2005).

A bond's "registration must express the actual ownership of, and interest in, the bond," and "registration is conclusive of ownership, except as provided in [§] 353.49 [to correct clerical errors]." 31 C.F.R. § 353.5(a) ("A bond may be registered in the name of one individual payable on death to another."). Savings bonds are "not transferable and are payable only to the owners . . . except as specifically provided in [Part 353] and then only in the manner and to the extent so provided."

To change a beneficiary designation on a bond, the owner is required to surrender the bond to an authorized agent and submit a request for reissue using specified "[s]ervice forms." 31 C.F.R. § 353.51, 353.47(c)(3); U.S. Dep't of the Treasury, Changing information about EE or I savings bonds (reissuing), TreasuryDirect, https://treasurydirect.gov/savings-bonds/manage-bonds/changing-information-ee-or-i-bonds (last visited July 18, 2023); 31 C.F.R. § 353.47 (amended 2014). "Reissue of a bond may be made only under the conditions specified in [Part 353]." 31 C.F.R. § 353.45(a).

The estate contends that the divorce between Michael and Jeanine automatically removed Jeanine as beneficiary of the bonds. Divorce proceedings are among those recognized by the Treasury with regard to federally issued bonds -- "[t]he 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." But those federal requirements were not satisfied in this case. The DSA and incorporating judgment of divorce did not even mention bonds of any sort, let alone provide that the couple was agreeing to a particular "disposal" of "settlement of interests of the parties in" the bonds. The DSA provided, moreover, that Jeanine "w[ould] *not* waive, release[ ], [or] relinquish[ ] any actual or potential right, claim, or cause of action against [Michael], including but not limited to asserting

a claim against ... [Michael's] estate ... except as otherwise provided in th[e DSA] or arising hereunder" (emphasis added). Nor did Michael ever submit "certified copies of the final judgment, decree, or court order, and of any necessary supplementary proceedings" "[t]o establish the validity of [the] judicial proceedings" purporting to change disposition of the bonds.

If a divorce decree does not address the disposition of a U.S. Savings Bonds, the original registration of the bonds and the survivorship rights pursuant to the federal regulations continue to govern -- "[t]he Department of the Treasury will not recognize a judicial determination that gives effect to an attempted voluntary transfer inter vivos of a bond, or a judicial determination that impairs the rights of survivorship conferred by these regulations upon a co[-]owner or beneficiary." This means that if the bonds were registered with a survivorship provision, and a divorce decree does not alter the registration in accordance with the requirements of the governing federal law, the surviving registered owner, co-owner, or, in this case, beneficiary, retain their rights under the bond.

The estate argues that despite the lack of mention of the bonds in the couple's settlement agreement (the DSA), Michael intended to revoke Jeanine's beneficiary designation under the bonds. As the Appellate Division said and the record shows, however, there is no evidence of this intent. Michael purchased

the bonds at various times from 1992 through 2010, all registered with Michael as owner and Jeanine as beneficiary. In all those years, Michael could have changed the beneficiary, but he did not.

The estate's claim of Michael's intent is undercut by the parties' actual agreement, moreover, providing that "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 …. Except as otherwise provided in this agreement or arising hereunder." App. Div. Appx. at Da68. The lack of any mention of the bonds in the DSA places the bonds squarely within this non waiver provision. Even the trial judge, who ruled in the Estate's favor, acknowledged this clause (Transcript at 7:1-25), and admitted that Michael "didn't say what his intent was" with regard to the bonds -- "It wasn't mentioned in the divorce decree." (Transcript at 9:1-25).

Even if Michael indeed intended to change the beneficiary designation under the bonds, that intent does not satisfy the federal law, which prescribes the manner in which such a change must be accomplished. There is no evidence of a single step that Michael took that even arguably could show an intent to change the beneficiary registration of the bonds.

That Michael, the undisputed owner of the bonds following the couple's divorce, could have changed the beneficiary designations, as the Estate notes,

does not mean that the parties agreed this would be done in their DSA, that Michael intended to do so, or that Michael actually took steps to do so in the manner that the federal law requires, see United States v. Chandler, 410 U.S. 257 (1973) (where registered co-owner of Series E United States savings bonds made physical inter vivos delivery of the bonds to the other registered co-owners, with intent to effectuate gifts, but without reissuance of the bonds, she did not succeed in divesting herself of the incidents of ownership, and thus, at her subsequent death, the value of the bonds were includable in her gross estate under the joint interests provisions of the Internal Revenue Code); cf. Fox v. Lincoln Fin. Grp., 439 N.J. Super. 380, 390 (App. Div. 2015) ("mere verbal expression of an intent to change a beneficiary designation is ineffective" where policy states that changes must be in writing).

The United States Supreme Court's decisions in Free or Yiatchos confirm that the federal law governing bonds prevails over any contrary state law except in cases of proven fraud (of which there is no evidence in this case),[2] see Free,

[2] As the Appellate Division noted, "the estate implies wrongdoing on Jeanine's part. However, the record is inadequate to sustain such a finding on summary judgment" (Opinion at 26, citing Sullivan v. Port Auth. of New York & New Jersey, 449 N.J. Super. 276, 283 (App. Div. 2017) (noting that "[c]onclusory and self-serving assertions by one of the parties are insufficient" on summary judgment (quoting Puder v. Buechel, 183 N.J. 428, 440–41 (2005)). The wrongdoing that the estate paints, moreover, involves conduct following Michael's death and has nothing to do with interfering with Michael's ownership rights in the bonds.

supra, 369 U.S. 664 ("Treasury Regulations creating a right of survivorship in United States Savings Bonds pre-empt[ed] any inconsistent Texas community property law by virtue of the Supremacy Clause, Article VI, Clause 2, of the Constitution."); Yiatchos, 376 U.S. 307 ("survivorship provisions of the federal regulations must control, preempting, if necessary, inconsistent state law which interferes with the legitimate exercise of the Federal Government's power to borrow money *** Under the federal regulations, [the brother was] entitled to the bonds unless [the decedent] committed fraud or breach of trust tantamount to fraud").

This present action is a civil lawsuit, moreover, not a "divorce proceeding" that the Treasury regulations recognize as possibly affecting ownership or other rights under federally-issued bonds; "[t]he Department of the Treasury will not recognize a judicial determination that gives effect to an attempted voluntary transfer inter vivos of a bond, or a judicial determination that impairs the rights of survivorship conferred by these regulations upon a co[-]owner or beneficiary." Federal law does not validate the trial judge's ruling in this case -- a post-hoc deprivation by a state court, in a civil lawsuit, of the ownership of Series EE bonds, cf. Ashley Sveen ("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,'" citing U.S. Const. art. I, § 10, cl. 1).

The trial judge's removal from Jeanine of the proceeds of the bonds, which she received as owner of the bonds under the federal law, is invalid by virtue of the Supremacy Clause, Gaupp v. Tarver, 96-0836 (La. App. 1 Cir.2/14/97) (La. Ct. App. Feb. 14, 1997), writ denied, 97-0675 (La.4/25/97) ("Clearly, the Supreme Court pronouncements hold that federal law regulating United States savings bonds preempts state law which fails to give effect to a term or condition under which a bond is issued."); Matter of Gray's Estate, 119 Misc. 2d 166, 166–67 (N.Y. Sur. 1983) ("Ownership of United States Savings Bonds is determined by Federal Regulation … Section 315.70(a)(1) indicates clearly that if one of the co-owners named on a bond has died, the surviving co-owner will be recognized as its sole and absolute owner…. it is apparent that Federal Law has pre-empted State Law distinctions which might be applied to Series E Bonds, and that pursuant to the Regulations, each of the bonds involved in this case are considered to be held in the names of co-owners. Upon the death of his respective co-owner of these bonds, Andrew Gray, Jr. became the sole and absolute owner"); Marcum v. Marcum, 377 S.W.2d 62, 64 (Ky. 1964) (noting "United States Savings Bond is a valid and binding contract which is determinative of the rights of the parties named therein; that the Treasury

regulations must be read into that contract; and that ownership is to be governed by its terms).

In the Appellate Division below, the Estate cited this Court's decision in Vasconi v. Guardian Life Ins. Co. of Am., 124 N.J. 338, 346 (1991). But Vasconi dealt with beneficiary rights under a life insurance policy, not federally issued bonds as here.

The Court's ruling in Vasconi, moreover, hinged on the fact that the designation of the ex-spouse as beneficiary of the life insurance policy was contrary to what the spouses had agreed to in their divorce settlement. Id. at 348. The divorce agreement provided for the complete "relinquishment … of 'any claim on the other party of any kind whatsoever…'" 124 N.J. at 347. The Court thus ruled that "when spouses divorce and enter into a property-settlement agreement that purports to settle 'all questions pertaining to their respective interests in distribution of the marital assets,' the proceeds of a life-insurance policy subject to the lifetime control of one spouse should ordinarily be considered as encompassed within the terms of the settlement agreement. Such a settlement agreement and waiver of interest in the property of the

deceased spouse should be regarded as presumptively revoking the nonprobate transfer of the insurance proceeds." Vasconi, supra, 124 N.J. 341.[3]

Unlike the agreement in Vasconi, the DSA between Michael and Jeanine in this case provided that "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 …. Except as otherwise provided in this agreement or arising hereunder." App. Div. Appx. at Da68. The trial judge acknowledged this clause (Transcript at 7:1-25), and admitted that the bonds were "mentioned in the divorce decree." (Transcript at 9:1-25). Vasconi does not provide that a court may rewrite a contract without at least substantial, undisputed evidence demonstrating that the revision effectuates what the parties plainly intended to accomplish, see Matter of Santos, 283 N.J. Super. 26, 30 (Ch. Div. 1994), aff'd, 282 N.J. Super. 509 (App. Div. 1995) (noting Vasconi rooted in fact that "[a] beneficiary designation must yield to the provisions of a separation agreement expressing an intent contrary to the policy provision," and that in case before the court "there is nothing in the record from which to even hazard

[3] There is some question, moreover, whether Vasconi was correctly decided with regard to whether federal ERISA law preempted the distribution of the life insurance proceeds, because the proceeds were distributed under a group life insurance policy.

a guess as to Dominick's probable intent with regard to the disposition of life insurance proceeds in the event of a divorce … [divorce judgment] is silent as to the disposition of the insurance policies"); Fox v. Lincoln Fin. Grp., 439 N.J. Super. 380, 390 (App. Div. 2015) (noting Vasconi as premised on agreement of parties there, in their divorce settlement, to eliminate beneficiary designation under life insurance policy; by contrast, "under the facts presented, Evanisa did not establish that Michael clearly demonstrated the intent to comply with the insurer's procedures for changing the beneficiary… The record is totally devoid of evidence that Michael attempted to do so.")

The United States Supreme Court's decision in Ashley Sveen v. Kaye Melin, 584 U.S. 811, 824 (2018), which the estate also cites, does not govern the bonds either because Ashley Sveen involved a beneficiary designation under a life insurance policy as well, and did not consider bond to which the United States is a party and is governed by express federal rules. Moreover, Ashley Sveen dealt only with the question of "whether applying Minnesota's automatic-revocation rule to a beneficiary designation" under the life insurance policy in question, "made before the statute's enactment violates the Contracts Clause of the Constitution," Ashley Sveen, supra, 584 U.S. 813.

The two out of state cases upon which the Estate heavily relies in its Petition are only persuasive authority and are not analogous to this case.

Smalley v. Smalley, 399 S.W.3d 631 (Tex. App. 2013), considered a final divorce decree that "divested [the ex-wife] of all right, title, interest, and claim in and to . . . all dividends, splits, and other rights and privileges in connection [with] . . . [t]he U.S. Treasury Savings Bonds . . . in the name of either or both parties." Unlike the DSA at issue before this Court, the spouse in Smalley made an "unambiguous waiver of her beneficiary rights in the agreed divorce decree," 399 S.W.3d 641.

Meer v. Garvey, 212 So. 2d 97, 98 (Fla. Dist. Ct. App. 1968), likewise considered a divorce agreement that "was broad enough in scope to include and settle their respective interests in the U.S. Savings Bonds," with a release provision that "released, discharged, barred, terminated and extinguished" any "manner of … **bonds**, covenants, contracts, agreements, judgments, claims and demands whatsoever, in law or in equity, which each party ever had." (emphasis added).

As stressed above, the DSA between Michael and Jeanine contained no provision even identifying the bonds let alone purporting to remove Jeanine as beneficiary. As the Appellate Division noted, "Indeed, the DSA never even mentions the savings bonds." App. Div. Op. at 28. The trial judge's decision "to credit the bond proceeds against Jeanine's DSA claims was premised on an unsubstantiated assumption 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. However, that belief is contrary to the plain terms of the DSA, which provided that Jeanine '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.'" App. Div. Op. at 29-30.

The Estate cites to the release provision in the DSA, which provides, "Each party, except as otherwise provided in this [a]greement, 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." Jeanine's redemption of the bonds after she became owner of them was not a claim against or liability of Michael or of his estate, nor was Jeanine's designation as beneficiary of the bonds. Moreover, as the Appellate Division said, "The release provision expressly applied to a right that had not been preserved elsewhere in the DSA. The waiver provision preserved 'any actual or potential right, claim, or cause of action' Jeanine had, not just those associated

with enforcement of Michael's DSA obligations. Read together, Jeanine did not waive all claims or rights she had relating to Michael. Therefore, contrary to the estate's assertion, the release provision did not conclusively divest Jeanine of all rights unrelated to enforcing her entitlement to the $200,000. Instead, given that the waiver provision preserves 'any and all rights,' the DSA preserved the right of survivorship the bonds conferred upon Jeanine." App. Div. Op. at 30.

The Estate argues that the DSA was intended to provide for "full distribution" of the parties' assets, citing the DSA's "personal property" provision as providing, "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." But Michael remained the owner of the Series EE bonds upon entry of the divorce judgment incorporating the DSA. These cited clause is consistent with that result. The DSA, moreover, did not provide for "full distribution" of all assets, providing, rather, that Jeanine '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'" – with the bonds mentioned nowhere within the DSA. App. Div. Op. at 29-30.

The Estate says that the DSA provided that "[a]ny marital asset not listed ... belong[ed] to the party who ha[d] it ... in their possession" at the time of the DSA's execution, and granted each party "exclusive use, possession, and ownership of all items titled in [their respective name] solely including cash on hand, [and] cash in banks." These clauses are not contradicted by the transfer of ownership of the bonds to Jeanine upon Michael's death. Michael owned the bonds outright following the couple's divorce, and had full rights to do whatever he chose with the bonds – transfer them, redeem them, change the ownership or beneficiary designations, etc. Jeanine's ownership only sprung forth upon Michael's death, not upon the divorce.

The Estate cites a provision of the DSA providing for a reservation of jurisdiction by the family court "if an asset is later discovered…" Petition at 10. The Series EE bonds were not later discovered – at least nothing in the record or the findings of the trial court determined that this was so. Such provisions providing for "later discovered assets," moreover, are meant to provide rights to the spouse who was not the holder or owner of the assets upon

the divorce. In addition, the estate did not seek to invoke some further jurisdiction of the family court – this is a civil lawsuit that the estate instituted, not a return to the family court in the divorce action.

The Estate argues, "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." Again, these provisions were not contradicted in any manner. The Series EE bonds were "distributed" to Michael upon divorce; he owned the bonds outright. No ownership or other rights of the bonds was given to Jeanine upon the couple's divorce.

The Estate argues that Jeanine "never protested to" Michael's possession or ownership of the bonds. Petition at 11. That's true, and it's because Michael indisputably owned the bonds, solely, upon divorce. The bonds were Michael's assets alone. Jeanine thus did not contest Michael's ownership of the bonds, and Michael, as sole owner, was free to exercise all of his rights under the federal laws governing the bonds – which included his right to change the beneficiary

of the bonds. He did not do so, however; Jeanine remained the registered beneficiary of the bonds and, when Michael died, she automatically became the owner. None of that contradicts what the DSA or divorce judgment provides (or, we submit, what the New Jersey statute provides because its automatic revocation provision does not apply where there are "express terms" an instrument providing otherwise).

The Estate argues, "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." Petition at 13. That's not what occurred in this case. As explained above, Michael was the owner of the bonds upon divorce; he could have done whatever he chose to do as long as it was permitted by the governing federal law – i.e., redeemed them, transferred them, or changed the beneficiary designations. Jeanine's ownership only sprung forth when Michael died, and this was per the governing federal law, not per what any New Jersey court ruled. The Appellate Division did not "take a marital asset and give it to Jeanine to the exclusion of" Michael.

The Estate argues that "Jeanine waived all rights to inherit from Michael's estate, except to the extent required to fulfill his DSA obligations." Petition at 12. Again, that's true under the DSA. But that does not conflict with the result in this case. Jeanine's right to ownership of the bonds is not a right against

Michael's estate or a right of inheritance. Jeanine became owner of the bonds automatically upon Michael's death under federal law; if a surviving beneficiary is named on a savings bond, the bond goes directly to that person. It does not become part of the estate of the person who died, see https://www.treasurydirect.gov/savings-bonds/manage-bonds/death-of-owner.

The Estate argues, "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." The couple's DSA does not say that. As stressed above, neither the DSA or overriding judgment of divorce even mention the bonds let alone provide that Jeanine was agreeing to "waive" any ownership rights of federally issued bonds that she might later acquire (the Estate cites the out of state decisions in Meer and Smalley in this regard, but as argued above those cases involved divorce settlements that expressly identified the bonds and provided for removal of one spouse's rights under them going forward – which is not what occurred in this case).

In sum, applying N.J.S.A. 3B:3-14 to conclude that Jeanine was automatically revoked as beneficiary of the Series EE bonds upon the couple's divorce conflicts with federal law and "fails to give effect" to Jeanine's ownership rights under the federal law. That result fails to give effect "to a term or condition under which a federal bond is issued," Free, supra, 369 U.S. 669,

and conflicts with 31 C.F.R. § 353.70(c)(1) (providing that a beneficiary's bond ownership is established upon proof of death of the owner).

Under the supreme federal law, unless there was a finding of fraud or breach of trust which was not found in this case (and of which there is no evidence), Jeanine, the registered beneficiary of the bonds, became the owner of them automatically upon Michael's death. Jeanine did not obtain ownership of the bonds from Michael or from his estate but by operation of the governing federal law.

Jeanine's subsequent receipt of $77,864.40 from redeeming the Series EE bonds was per her ownership of the bonds at the time of redemption, not per money distributed from Michael or from his estate. The $77,864.40 was a payment from the United States per the bond – a contract between the owner of the bond and the issuer (the United States government); not a payment by Michael or by his estate.

The DSA and divorce judgment effectuating it does not provide that Jeanine was agreeing to relinquish any assets or rights to the marital estate other than those that were expressly addressed in the DSA – and the DSA does not reference the bonds in any manner let alone provide for Jeanine to be removed as beneficiary or to relinquish any current or future rights under them. The record contains no evidence that Michael intended to remove Jeanine as

beneficiary of the bonds, that he took even a single step to do so, or that he actually did so in accordance with the requirements of the governing law.

## Conclusion

For all these reasons, the Court should affirm the result of the Appellate Division below.

Respectfully submitted,

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