

BOYETT - PENSIONS AND DIVORCE

Boyett v. Boyett, 703 So. 2d 451; 1997

The Boyett decision defines the "marital component" of the Employee Spouse's Pension Benefit that is subject to division incident to divorce. It is applicable to calculations of Present Value and to QDRO allocations.

Boyett Calculation is NOT a Traditional Coverture Fraction:

This decision created a "*marital property measuring format*" that is significantly less expansive than the "Time Rule" form of Coverture Fraction that is currently applied in forty-four states. In a Boyett calculation only that portion of the pension acquired from the later of the Date of Marriage or the Employee's Hire Date, up to the Filing Date of an Action for Dissolution is deemed divisible marital property.

The significant financial impact of this decision and its most damaging impact occurs with Defined Benefit Plans. Boyett specifically limits an Alternate Payee that portion of the benefit acquired up to the End of Marriage Date. The Traditional Coverture Fraction uses as the "referencing benefit" the actual retirement benefit as of the date of the Participant's retirement (*this produces a multiple of the Boyett award to a Former Spouse*). Benefits acquired prior to or after marriage are excluded (by the Coverture Fraction). For a comparison of Boyett to a clear description of the Traditional Coverture Fraction see: Marx v. Marx, (627 A.2d 691).

The informed attorney understands that Boyett does not specifically bar insertion into a Marital Settlement Agreement of Traditional Coverture Fraction language. Thus, attorneys representing the Non-Employee Spouse may seek to insert into a Marital Settlement Agreement and QDRO language that applies the more expansive form of Coverture Fraction. Alternatively, attorneys representing the Employee-Spouse will conform settlements to the more restrictive Boyett Coverture Fraction.

For development of this topic for Defined Benefit Plans contact Troyan & Associates. Compliments of: www.QDROAttorney.com