



## Post-Windsor Federal District Court Decision Rules that ERISA Plan Must Recognize Same-Sex Spouse as Beneficiary of Participant's Death Benefits

08.06.2013

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In one of the first decisions to apply the U. S. Supreme Court's ruling in *United States v. Windsor*, \_\_\_ U. S. \_\_\_ (June 26, 2013), to a question of benefits distribution under an ERISA-regulated retirement plan, the U. S. District Court for the Eastern District of Pennsylvania declared, in *Cozen O'Connor, P.C. v. Tobits*, No. 11-00454 (E.D. Pa. July 29, 2013), that an ERISA-regulated profit sharing plan must recognize the surviving same-sex spouse as the beneficiary entitled to receive a participant's death benefits.

The specific circumstances of the *Tobits* case may significantly limit its applicability to other cases, as the following will show.

Background. Sarah Ellyn Farley ("Farley") worked at the Cozen O'Connor, P.C. law firm from 2004 until her death in September 2010. In 2006, Farley and Jean Tobits were married in Canada under Canadian law, and subsequently resided in Illinois until Farley's death.

Cozen O'Connor sponsored a profit sharing plan ("the Plan") which provides that, upon a participant's death, the Plan's administrator must pay death benefits to the participant's beneficiary in the form of a qualified pre-retirement survivor annuity in accordance with ERISA and the Internal Revenue Code (the "Code"). The Plan states that the death benefits will be paid to the participant's "surviving Spouse" if one exists, unless the participant elects otherwise. In accordance with ERISA's Section 205, a participant could name a beneficiary other than the participant's "Spouse," however, if the participant has a "Spouse", the designation of a non-spouse beneficiary would be invalid unless the Spouse first waived, in writing, his or her rights to the death benefits. If the participant has no "Spouse," then the Plan provides that the participant's surviving parents will receive the death benefits in equal shares. The Plan expressly requires that its terms be construed in accordance with ERISA and the Code.

Farley was a participant in the Plan at the time of her death. There was never a dispute that Tobits had not waived any right to receive the death benefits. Shortly after Farley died, both Tobits and Farley's parents submitted written requests to be paid the death benefits. Responding to these conflicting claims,

in January 2011, Cozen O'Connor, P.C. filed an interpleader action in federal court in Pennsylvania, where Cozen O'Connor, P.C.'s Plan is based. The district court suspended the case until the U. S. Supreme Court's decision in *Windsor* was issued.

The Court's Ruling. The court resolved the disputed claims by deciding that Tobits was Farley's "Spouse" within the meaning of the Plan, which determined the case's central issue.

To reach that conclusion, the court noted that the Plan did not define who is a "Spouse," except to say that anyone who is a "Spouse" must be married for a year prior to receiving the death benefits. Based on the Plan's provisions requiring compliance with ERISA and the Code, the court then turned to those federal laws and to the recent ruling in *Windsor*.

The Supreme Court's decision in *Windsor* construed one section of DOMA, namely, Section 3, which defined "marriage", for purposes of any Act of Congress or rulings, regulations and interpretations of federal agencies, as a legal union between one man and one woman as husband and wife, and a "spouse" as only a person of the opposite sex who is a husband or a wife. Section 2 of DOMA provides that no State is required to give effect to any public act, record or proceeding respecting a same-sex marriage under the laws of any other State, or to any right or claim arising from such a same-sex relationship. Thus, Section 2 allows States to refuse to recognize same-sex marriages lawfully performed in other States.

*Windsor* involved a claim for federal estate tax exemption by a resident of New York, where the plaintiff and her same-sex spouse had resided, and the ruling addressed only DOMA's Section 3. Resting heavily on New York's state law recognizing same-sex marriage as valid, and on the traditional deference to state laws defining marriage, the Supreme Court held that DOMA's Section 3 violated the U. S. Constitution's Fifth Amendment which prohibits the federal government from denying any person equal protection of the laws. However, DOMA's Section 2 was not reviewed or interpreted, and was left intact.

The *Tobits* opinion did not refer to or discuss DOMA's Section 2. There was no dispute that Farley and Tobits were married validly under the laws of Canada. Perhaps crucially, although their State of residence, Illinois, does not issue marriage licenses to same-sex couples, its civil union statute allows the recognition of same-sex marriages celebrated in other jurisdictions. The district court took judicial notice that the relevant state court in Illinois declared in 2011 that Tobits was Farley's sole heir, and held that under *Windsor*, "where a state has recognized a marriage as valid, the United States Constitution require[s] that the federal laws and regulations of this country acknowledge that marriage."

Pennsylvania law contains a state version of DOMA, but the *Tobits* court did not apply it. The court held that Pennsylvania law was applicable to the Plan only where ERISA did not preempt it, and ruled that Pennsylvania's law was entirely preempted by federal law in this case – impliedly avoiding any need to decide whether DOMA's Section 2 affected Tobits' claim.

The Significant Lessons to Take Away: As an early post-*Windsor* decision, *Tobits* will probably be influential, and so it is important to recognize what it decided and what it did not:

- This case involved a profit sharing plan expressly requiring that the pre-retirement survivor annuity provisions be construed according to federal law. In addition, the State where the participant and beneficiary resided recognized the validity of the same-sex marriage celebrated under the law of another jurisdiction. Under these circumstances, the court held that federal law will recognize the validity of the same-sex marriage to determine the survivor's status as the participant's spouse.
- Other plans may, by contrast, define a "spouse" by reference to the law of a specific State other than the state where a marriage was celebrated, such as the law of the State where the couple

resides. The *Cozen O'Connor, P.C. v. Tobits* ruling did not decide whether such plan terms will dictate a different result where such other State does not recognize the validity of same-sex marriages celebrated in any other jurisdiction. The applicability of DOMA's Section 2 is still an issue.

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