



Court Decision Illustrates Need for Estate Planning for LGBT and Other Non-Traditional Families

Syracuse, New York

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A federal district court recently issued the first decision to address the federal treatment of same sex marriage after the Supreme Court struck down a portion of the Defense of Marriage Act in *United States v. Windsor*. The decision, *Cozen O'Connor, P.C. v. Tobits*, is from the United States District Court for the Eastern District of Pennsylvania. While District Court decisions do not have the precedential value of appellate decisions, it is a worthwhile reminder of the need for planning for same sex couples and other non-traditional families.

The case involves a same sex couple who lived in Illinois and were married in Toronto, Ontario, Canada in 2006. The deceased spouse, Sarah Ellyn Farley, was an attorney at a law firm that offered a qualified retirement plan under the Employee Retirement Income Security Act (ERISA). The plan offered a pre-retirement survivor annuity that, in the absence of a beneficiary designation, would benefit the participant's surviving spouse or, if the participant was not married, the participant's parents.

Farley died in 2010 without providing a beneficiary designation for her benefits under the law firm's retirement plan. Farley's parents and surviving spouse, Jennifer Tobits, each filed claims to receive the pre-retirement survivor annuity. Faced with competing claims, the firm's plan filed an action in federal court to determine who should receive the annuity. The Court suspended the case pending the decision in *Windsor* and issued its decision on August 5.

The Court found that federal law (ERISA) preempted state law with regard to the definition of "spouse" under the plan. The Supreme Court decision in *Windsor* requires that federal law acknowledge a marriage that is valid under state law. The Court noted that Farley and Tobits' Canadian marriage was valid under Illinois law, their state of residence. Accordingly, the Court found that the use of the term "spouse" under the plan included Tobits as the surviving spouse and, as a result, she should receive the benefits.

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The case illustrates the difficulty that varying state's laws may present for same sex couples. Had Tobits and Farley lived in another state, it is possible that Tobits would not have been successful. The *Windsor* decision only requires that federal law respect the applicable state law with regard to marriage and the definition of "spouse." In states like New York, which permit same sex marriage, or states like Illinois, which respect marriages from other jurisdictions, same sex couples are considered married for both state and federal purposes. However, for couples living in states like Pennsylvania, which do not allow same sex marriage and do not respect such marriages entered into in other jurisdictions, their marriages will *not* be considered valid under state or federal law.

This case also illustrates the need for prior planning. Had Farley executed a beneficiary designation in favor of Tobits, there would have been no question as to who should receive the benefits. In absence of a beneficiary designation, the surviving spouse had to engage in drawn-out, expensive litigation to determine who should receive the benefits. As with all of our clients, we recommend that same sex couples and other non-traditional families execute proper beneficiary designations for all of their retirement assets to be sure that their benefits flow to their intended beneficiaries.

For more information and to discuss how this ruling impacts your estate planning needs, please call:

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**Bousquet Holstein Estates & Trusts Practice Group**

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