



*Michael A. Caldwell, L.L.C.*  
*Email: [Michaelcaldwell@dcbflegal.com](mailto:Michaelcaldwell@dcbflegal.com)*

*Writer's Direct Dial: 404-979-3154*  
*Writer's Direct Fax: 404-835-0652*

## ***Same-Sex Marriages and ERISA-Covered Benefit Plans***

In *Cozen O'Connor v. Tobits*, a ruling made in the aftermath of the US Supreme Court's decision in *U.S. v. Windsor*, the U.S. District Court for eastern Pennsylvania held that a deceased employee's same-sex spouse is entitled to receive death benefits under the employer's ERISA-qualified plan, even though Pennsylvania's state law invalidates such marriages.

### ***Background***

Sarah Ellyn Farley began working for Cozen O'Connor law firm in 2004. She became a participant in the firm's profit-sharing plan. Ms. Farley married Jean Tobits in Canada, which legally recognizes same-sex marriages in 2006. After Ms. Farley died in 2010 her parents and Ms. Tobits, raised competing claims to the death benefits established by Cozen O'Connor's Profit-sharing Plan. The Plan provided that the surviving spouse of an employee automatically becomes the recipient of death benefits. If there is no spouse or other designated beneficiary, then the death benefits are to be paid to the decedent's surviving parents. To qualify as a "spouse" under the Plan, the individual must be married to the employee for at least one year prior to receiving benefits. The Plan requires that its terms are to be construed and enforced according to ERISA and the Internal Revenue Code.

### ***The District Court's Decision***

The District Court had to determine "exactly who can be a 'Spouse.'" Relying upon the Supreme Court's recent decision in *U.S. v. Windsor* Judge Darnell C. Jones II, noted that the Supreme Court had determined that Section 3 of the Defense of Marriage Act, which defined "marriage" as strictly heterosexual and "spouse" as referring only to a person of the opposite sex who is a husband or a wife, was unconstitutional. He reasoned that, following the *Windsor* decision, "the term 'Spouse' is no longer unconstitutionally restricted to members of the opposite sex, but now rightfully includes those same-sex

spouses in ‘otherwise valid marriages.’” Therefore, the court held that “Ms. Tobits is Ms. Farley’s ‘Spouse’ pursuant to the terms of the Plan” and ordered that the death benefits be paid to Ms. Tobits.

The Court reached this conclusion even though Pennsylvania’s state law explicitly voids same-sex marriages, including those that are entered into or validated in other states or foreign jurisdictions that recognize such marriages. While this decision is precedent only in the Eastern District of Pennsylvania, if it is not reversed on appeal, or if other courts follow the *Cozen* Court’s reasoning, every employer with ERISA-qualified plans may be affected. This would be so *even if the employer is headquartered in a state that does not recognize same-sex marriages*. Clients are advised to watch for future developments in this case and to review their benefit plans carefully to determine whether similar disputes may arise.