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Woman May Lose Same-Sex Spouse's Death Benefits to Homophobic In-Laws

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Sarah Ellyn Farley—or Ellyn as she was known—lay in a hospital bed, coughing up blood, just a few hours from death. The rare form of cancer she had suffered from for more than four years was taking its final toll. Her wife Jennifer Tobits, whom she married in Toronto in February 2006, knew the end was near. But rather than wait by her bedside as Farley succumbed to the disease, she was caught in a bitter feud with Farley's parents over the rights to Farley's estate and employer-granted profit-sharing plan.

According to [court documents](#), in those final hours, Farley's parents coerced Tobits to bring a copy of the [designation of beneficiary form](#) for the profit-sharing plan to the hospital. They then entered Farley's hospital room and had her sign the form designating them as the beneficiaries to the plan, worth approximately \$41,000. The signing allegedly occurred no more than 30 minutes after Farley had been vomiting blood. Tobits never signed the spousal consent section of the form, an act she and her counsel allege was required to legitimize the transfer of beneficiary.

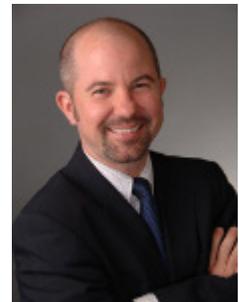
Farley died shortly thereafter, and now her parents, her employer and her surviving partner are embroiled in a fight to determine whether federal law precludes Tobits from being considered a legal spouse under Farley's employer's profit-sharing plan.

- Surviving same-sex spouse asserts claim to late wife's death benefits
- Deceased's parents say DOMA prevents benefits from going to same-sex spouse
- Case serves as a reminder to always designate a beneficiary for benefits

A Family Feud

According to court documents filed on Aug. 1 by Tobits' attorney Melanie S. Rowen from the [National Center for Lesbian Rights \(NCLR\)](#), Farley and her parents always had a rocky relationship. Tobits alleges that the Farley's parents subjected her to "severe physical and emotional abuse" as a child to the point that, as an adult, she still retained visible scars on her back. Their treatment of her and her relationship to Tobits was no better.

"The parents refused to recognize that Ellyn was in a loving marriage with a same-sex partner," says NCLR legal director Shannon Minter. "They refused to accept her identity and that she and Jennifer were married."



Shannon Price Minter

At the time Farley was checked into the hospital, Tobits was designated as her [health care agent](#), meaning she had the legal right to make all health care decisions on Farley's behalf. On the day Farley was hospitalized, Tobits contacted her parents who arrived late that night. Farley already had a last will and testament and had named her best friend as its executor. While at the hospital, Mr. Farley, Ellyn's father, repeatedly asked Tobits for a copy of the will.

Later that day, Mr. Farley instructed the attending nurse that he and his wife had assumed the role of health care agent and thus proceeded to make medical decisions on their daughters behalf, including who could and could not visit Ellyn. Tobits continued to refuse Mr. Farley's request for the will. He then began making requests for the designation of beneficiary form for the employer profit-sharing plan. Fearing that she would be barred from seeing her wife, Tobits complied, resulting in the designation of Mr. and Mrs. Farley as the [beneficiaries](#).

After Farley's death, a fight ensued in [probate court](#) over Farley's estate where Farley and Tobits resided in Illinois. At the time Tobits' counsel filed the petition exerting her rights to be [the administrator of the estate](#), Illinois had already enacted its civil-union law, which also recognizes same-sex marriages from other jurisdictions.

"Illinois law is now very clear that the state will recognize same-sex spouses," Minter says. "The court has ruled that [Tobits] is the surviving spouse and named her the administrator of the estate."

Though the issue of Farley's estate was settled, the fight over her employer-granted profit-sharing plan was just heating up.

Profit-Sharing Problems

Farley's employer, the [Cozen O'Connor law firm](#), provides its employees with a number of benefits, including a profit-sharing plan that if not beneficiary is designated, goes to the employee's surviving spouse. However, the firm never defined the term "spouse" in its paperwork.

Tobits alleges that she is the rightful recipient of the money because she is Farley's surviving spouse and because the plan did not explicitly exclude same-sex spouses from being excluded from the plan's definition of "spouse."

"There is no indication in Cozen O'Connor's plan that they would deny a same-sex spouse," Minter says. "A spouse is someone you are married to. If that is not what you intended, you have a legal obligation to communicate that under the plan.

Minter alleges that the [Employee Retirement Income Securities Act \(ERISA\)](#), a law that regulates employer benefits plans, obligates the law firm to specify what benefits are available to employee and what may be excluded.

However, Farley's parent, represented by the [Thomas More Society](#), allege that the [Defense of Marriage Act \(DOMA\)](#), a regulation found on the federal level and in many states that defines spouses as being of the opposite sex, applies to ERISA and thus, for the sake of private employer benefits plans, a spouse must be of the opposite sex.

"The deceased was fully aware of her rights under the law to designate her parents as the beneficiaries of her profit-sharing plan proceeds, even going so far as to state that she was 'single' in accord with the law," Peter Breen, executive director and legal counsel of the Thomas More Society, said in a statement. "What Ms. Tobits is trying to do is circumvent both federal and state laws for her own financial gain. The Farleys merely seek to effectuate their daughter's final wishes, while her alleged 'spouse' seeks to unjustly pad her pocketbook,"

Cozen O'Connor, which stated they have no position on the case, filed what is known as an [interpleader](#) with the [U.S. District Court for the Eastern District of Pennsylvania](#). The interpleader allows the firm to remove itself from the case and let the court make a decision based on the arguments of the parents and Tobits.

Now the issue is up to the court to determine whether Tobits spousal status will hold up in Pennsylvania.

A Lesson for Employees and Employers

[Todd Solomon](#), a partner at [McDermott Will & Emery](#) and an expert on domestic-partnership benefits, said that DOMA does indeed have a baring on ERISA and the Internal Revenue Code, both of which may play a role in this case.

"Normally with profit-sharing plans that fall under the tax code and ERISA if you don't name a beneficiary, your benefits go to your spouse, and because the provision is under federal law, this is typically interpreted to mean opposite-sex spouse" Solomon says. "If you want to name someone else and you are married, you need the consent of your spouse, which once again would refer to opposite-sex spouse because of DOMA."

If an employer does not define the term "spouse" in its benefits information, it will often defer to the state's definition of a spouse. In Tobits case, Pennsylvania defines a spouse as someone of the opposite-sex. However, if a private employer so chooses, it can specify that same-sex spouses are included in the definition of spouse for the purposes of its plan.

"The whole case is a great lesson for employers that they need to do careful plan drafting and they need to define the word 'spouse,'" Solomon says. "For employees, you should always name your beneficiary."

The case between Tobits and Farley's parents recently gained national attention. Earlier this month, Republican members of [the Bipartisan Legal Advisory Group of the U.S. House of Representatives](#) requested the judge in the case to allow it to intervene to defend Section 3 of DOMA, the section that defines spouses as being of the opposite sex.

Meanwhile, on Nov. 18, a bipartisan bill was introduced in Congress that would put the federal government on par with most Fortune 500 companies by extending employee-benefits programs to cover domestic partners of federal employees. The bill is known as the [Domestic Partnership Benefits and Obligations Act of 2011](#). Currently, DOMA precludes the federal government from extending such benefits to same-sex partners of federal employees.

[Keith Ecker](#) co-authors the Lawyers.com blog.

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