

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

COZEN O'CONNOR, P.C.  
1900 Market Street  
Philadelphia, PA 19103

Plaintiff,

v.

JENNIFER J. TOBITS  
7442 N. Hoyne Avenue, Apt. 2N  
Chicago, Illinois 60645

DAVID M. FARLEY and  
JOAN F. FARLEY, h/w  
6510 Woodbrook Drive  
Roanoke, Virginia 24018

Defendants.

Case Number:

Judge:

**COZEN O'CONNOR'S COMPLAINT FOR INTERPLEADER**

Plaintiff, Cozen O'Connor, P.C. ("Cozen O'Connor"), by its attorneys, hereby files its complaint for interpleader and avers:

1. Plaintiff, Cozen O'Connor, brings this action for interpleader pursuant to Federal Rule of Civil Procedure 22, because it is exposed to multiple liability due to the competing beneficiary claims of Jennifer J. Tobits and David M. Farley and Joan F. Farley in connection with the distribution of benefits under the Cozen O'Connor Profit Sharing Plan issued to decedent Sarah Ellyn Farley.

**I. JURISDICTION, PARTIES, AND VENUE**

2. Cozen O'Connor is a corporation incorporated under the laws of the state of Delaware with its principal offices in the Commonwealth of Pennsylvania.

3. Jennifer J. Tobits is a resident of the State of Illinois. Ms. Tobits claims that she is the surviving spouse of decedent, Sarah Ellyn Farley.

4. David M. Farley and Joan F. Farley, husband and wife, are residents of the State of Virginia. David and Joan Farley are the surviving father and mother of decedent, Sarah Ellyn Farley.

5. This Court has jurisdiction under 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e).

6. Venue is proper in this district pursuant to 28 U.S.C.A. § 1391, because the property that is the subject of this action is situated in this district, and pursuant to 29 U.S.C. § 1132(e)(2), because the Cozen O'Connor Profit Sharing Plan is administered in this district.

## **II. THE PROFIT SHARING PLAN**

7. On or about January 1, 2007, Sarah Ellyn Farley, Cozen O'Connor's employee, became eligible to participate in the Cozen O'Connor Profit Sharing Plan (hereinafter, the "Plan") whereby Cozen O'Connor promised to distribute the value of Ms. Farley's accounts to her Beneficiary upon Ms. Farley's death. The Plan is subject to the provisions of ERISA, 29 U.S.C. §§ 1101 *et seq.*

8. The Plan has a current value of \$37,197.54 with a cash value of \$32,472.54. An additional estimated \$4,725.00 cash contribution will be made during the calendar year 2011.

9. Cozen O'Connor had not received a valid designation of Beneficiary from Ms. Farley prior to her death.

## **III. COMPETING BENEFICIARIES UNDER THE PLAN**

10. Ms. Farley died on September 13, 2010.

11. Following Ms. Farley's death, David and Joan Farley presented a designation of Beneficiary form to Cozen O'Connor, purporting to show that Ms. Farley had designated them as her Beneficiaries under the Plan and had represented her present marital status as "single." (A true copy of this designation of Beneficiary form is attached hereto as Exhibit A; see also letter from Jonathan W. Michael, counsel for David and Joan Farley, to Vincent R. McGuinness, Esq., dated November 11, 2010, a true copy of such letter is attached hereto as Exhibit B.)

12. This form contains the date of September 12, 2010, the day before Ms. Farley's death. It is unsigned by her and purports to have the signature of Ms. Farley's spouse notarized which is inconsistent with the declaration that she is "single" and, in any event, is not signed by her spouse. Accordingly, Cozen O'Connor cannot determine the validity of this designation of Beneficiary form.

13. On November 30, 2010, Ms. Tobits advised Cozen O'Connor that she intended to file a claim with respect to the accounts owed to Ms. Farley's Beneficiary under the Plan. (A true copy of the letter by Ms. Tobits addressed to Cozen O'Connor's counsel, H. Robert Fiebach, dated November 30, 2010, is attached hereto as Exhibit C.)

14. Ms. Tobits presented Cozen O'Connor with a copy of a Marriage Certificate executed on February 17, 2006 in Toronto, Ontario, Canada between Sarah Ellyn Farley and Jennifer Jean Tobits. (A copy of the Marriage Certificate, represented to be a true and correct copy of the original Marriage Certificate by Ms. Tobits, is attached hereto as Exhibit D.)

15. Under article VI, section 6.2(a) of the Plan, "[u]pon the death of a Participant . . . all amounts credited to such Participant's Combined Account shall

become fully Vested. The Administrator shall direct the Trustee . . . to distribute the value of the deceased Participant's accounts to the Participant's Beneficiary," (A true copy of article I of the Plan, entitled "Definitions," article VI of the Plan, entitled "Determination and Distribution of Benefits," and article IX of the Plan, entitled "Miscellaneous," are attached hereto as Exhibit E.)<sup>1</sup>

16. Article VI, section 6.2(e) instructs that:

(e) Unless otherwise elected in the manner prescribed in Section 6.6, the Participant's surviving Spouse shall receive a death benefit equal to the Pre-Retirement Survivor Annuity. The Participant may designate a Beneficiary other than the Spouse to receive that portion of the Participant's death benefit which is not payable as a Pre-Retirement Survivor Annuity. The Participant may also designate a Beneficiary other than the Participant's Spouse to receive the Pre-Retirement Survivor Annuity but only if:

(1) the Participant and the Participant's Spouse have validly waived the Pre-Retirement Survivor Annuity in the manner prescribed in Section 6.6, **and the Spouse has waived the right to be the Participant's Beneficiary**, or

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(3) the Participant has no Spouse, or

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(Exh. E) (emphasis supplied.)

17. "Spouse" is defined under article I, section 1.55A to mean "the person to whom the Participant has been married throughout the one-year period ending on . . . the date of the Participant's death." (Id.)

18. Under article VI, section 6.2(f):

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<sup>1</sup> Due to its voluminous size, Cozen O'Connor has not attached the Plan in its entirety, but rather has attached the relevant articles of the Plan. Cozen O'Connor will produce the Plan in its entirety if this Court so wishes and directs.

(f) In the event no valid designation of Beneficiary exists, or if the Beneficiary is not alive at the time of the Participant's death, the death benefit will be paid in the following order of priority to:

(1) the Participant's surviving Spouse;

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(3) the Participant's surviving parents, in equal shares; or

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(Id.)

19. Additionally, under article IX, section 9.3, the Plan "shall be construed and enforced according to the [Internal Revenue Code], the [Employee Retirement Income Security Act (the "Act")], and the laws of the Commonwealth of Pennsylvania, other than its laws respecting choice of law, to the extent not pre-empted by the Act."

(Id.)

20. Ms. Tobits' signature does not appear on the designation of Beneficiary form in the space reserved for spousal consent to beneficiary designation. (See Exh. B.)

21. By reason of these conflicting claims of the defendants, plaintiff is uncertain as to which defendant is entitled to distribution of the accounts owed to Ms. Farley's Beneficiary under the Plan.

WHEREFORE, Cozen O'Connor, P.C., respectfully requests that the court adjudge:

a) That the defendants be required to interplead and settle among themselves their respective claims to the money due under the Plan;

b) That each defendant be restrained from commencing any action against Cozen O'Connor on the Plan;

c) That Cozen O'Connor be permitted to pay into the registry of the court all amounts due under the Plan and upon such deposit be discharged from all liability arising from the Plan; and

d) That Cozen O'Connor be awarded its costs and attorneys' fees.

Respectfully submitted,

COZEN O'CONNOR

By: 

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Dated: January 4, 2011