

SAM GLASSCOCK III
VICE CHANCELLOR

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: January 27, 2012
Decided: February 1, 2012

Seth A. Niederman
Austen C. Endersby
Fox Rothschild LLP
919 N. Market St., Suite 1300
Wilmington, DE 19801

Stephen W. Spence
Stephen A. Spence
Phillips Goldman & Spence PA
1200 North Broom Street
Wilmington, DE 19806

Stephani J. Ballard
Law Offices of Stephani J. Ballard, LLC
1308 Delaware Avenue
Wilmington, DE 19806

Re: *Poppiti v. Conaty and Curran*
Civil Action No. 6920-VCG

Dear Counsel:

This letter shall constitute my decision on Defendant Thomas P. Conaty IV's Motion to Dismiss for Lack of Subject Matter Jurisdiction. Conaty & Curran LLC ("the Company") was a law firm formed on December 15, 2006, pursuant to the Delaware Limited Liability Company Act.¹ Thomas P. Conaty IV and James P. Curran ("the Defendants") are both lawyers who were members of the Company. On September 13, 2010, the Defendants decided to part ways and dissolve the Company according to the terms of its Operating Agreement and

¹ Compl. ¶ 4; 6 *Del. C.* §§ 18-101 *et. seq.*

6 *Del. C.* § 18-801.² The Plaintiff, Vincent J. Poppiti, was appointed the Liquidating Trustee of the Company.

The Liquidating Trustee brought this action to resolve a dispute over potential company assets. His complaint states that the Company had previously filed suit against the Catholic Diocese of Wilmington, Inc. (“CDOW”) on behalf of 10 individuals alleged to have been sexually abused by employees of the CDOW.³ That litigation was stayed on October 18, 2009, because the CDOW filed for Chapter 11 Bankruptcy; however, on July 28, 2011, the U.S. Bankruptcy Court “confirmed the CDOW’s Chapter 11 amended Plan of Reorganization” which resolved and settled the lawsuit against the CDOW.⁴ The fee award from that suit was granted after the dissolution of the Company, and the matter before this Court concerns a disagreement between the parties about to whom the fee award belongs.⁵

Defendant Conaty contends that this Court is without subject matter jurisdiction to decide that question, which he characterizes as one of contract. The Court of Chancery is a court of limited jurisdiction.⁶ This Court may only entertain matters which fall within its equitable jurisdiction or as otherwise

² Compl. ¶ 5.

³ *Id.* at ¶ 14.

⁴ *Id.* at ¶¶ 16-17.

⁵ *Id.* at ¶¶ 20-33.

⁶ *International Business Machines Corp. v. Comdisco, Inc.*, 602 A.2d 74, 78 (Del. Ch. 1991).

provided by statute.⁷ Here, the underlying dispute requires the interpretation of the LLC's Operating Agreement and whether it dictates that the CDOW fee award is property of the Company or of Defendant Conaty as an individual. Jurisdiction over such disputes is provided by 6 *Del C.* § 18-111, which confers jurisdiction to this Court over matters involving the “interpretation and enforcement of limited liability company agreement[s].”⁸

Although this litigation may contain issues that are outside of the Court's statutory or equitable jurisdiction, once the Court's jurisdiction has been properly invoked the Court may determine all issues pursuant to its ancillary jurisdiction.⁹

For the above reasons, Defendant Conaty's Motion to Dismiss for Lack of Subject Matter Jurisdiction is denied.

IT IS SO ORDERED.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III
Vice Chancellor

⁷ *In re Arzuaga-Guevara*, 794 A.2d 579, 584-87 (Del. 2001).

⁸ 6 *Del C.* § 18-111; *see also Elf Atochem N. America., Inc. v. Jaffari*, 727 A.2d 286, 292 (Del. 1999) (explaining that the Limited Liability Company Act, 6 *Del. C.* §§ 18-101 et. seq., “established the Court of Chancery as the default forum” for resolving LLC disputes). I also note that there may be other bases for this Court's jurisdiction. *See* 6 *Del. C.* § 18-803.

⁹ *Acierno v. Goldstein*, 2004 WL 1488673, at *4 (Del. Ch. June 25, 2004); *see also Medek v. Medek*, 2008 WL 4261017, at *3 (Del. Ch. Sept. 10, 2008) (“The Court of Chancery ... routinely decides controversies that encompass both equitable and legal claims.” (quoting *Nicastro v. Rudegeair*, 2007 WL 4054757, at *2 (Del.Ch. Nov.13, 2007))).