

The View from South Dakota, by Jim Hanhardt

As an investor or interested party in the Kokoweef venture, you may have wondered, like I have, what's the deal with this lawsuit and court actions afflicting Kokoweef Inc. (formerly Explorations Inc. of Nevada)? What's all the bellyaching about? How did this mess start and why? And what do all those court documents mean? Anybody else confused by all the legalese, lawyer language, and posturing?

Well, I ain't a lawyer. But I've waded through a bunch of those court documents, and think I might be able to offer some explanations. By way of introduction, I'm Jim Hanhardt, an investor. I've been involved since 1983. I've made my living working in underground mines throughout the western United States since 1971. And I've helped excavate some of the tunnels out at Kokoweef that have resulted in the discovery of caverns, and for a few years was the Vice President in charge of Mines Operations of Exploration Inc. of Nevada (1986 – 1990).

When you begin to look at the whole deal, it's pretty plain that two fellows, namely Ted Burke & Larry Hahn have a big disagreement about how the company is and/or has been operated. Both of these guys are successful businessmen, and both of them have a professed interest in the legend to which they both have devoted money, time, and effort (including physical work) to varying degrees. And like in about every other court case you can think of, they've got some personal issues and egos mixed up in this whole business. So it's easy to view this as a fight between Larry and Ted, with a few folks throwin' in with them (the other names listed under Plaintiffs and Defendants) and it's easy to say there's two sides to this thing, and you gotta be on one side or the other.

But I think there is a third side, and that side is the investors themselves, because we have an interest in this ourselves. A bunch of us have devoted money, time, and effort (including physical work), too. Now it's kinda hard for some of us to be objective because we've had dealings with the two principle players in this thing, and we've developed some loyalties and feelings toward these guys and the issues at hand. So, I'm suggesting we step back from that and look at this deal objectively, and see what's going on.

So here's some history. Larry Hahn set up a corporation in 1984 called Explorations Inc. of Nevada to take over when the old Legendary Kokoweef Caverns went broke. In a general sense, a corporation is a business entity that is given many of the same legal rights as an actual person. Corporations may be made up of a single person or a group of people, known as sole corporations or aggregate corporations, respectively.

Corporations exist as virtual or fictitious persons, granting a limited protection to the actual people involved in the business of the corporation. This limitation of liability is one of the many advantages to incorporation, and is a major draw for smaller businesses to incorporate; particularly those involved in highly litigated trade.

A company is incorporated in a specific nation, often within the bounds of a smaller subset of that nation, such as a state or province. The corporation is then governed by the laws of incorporation in that state.

A corporation may issue stock, either private or public, or may be classified as a non-stock corporation. If stock is issued, the corporation will usually be governed by its shareholders,

either directly or indirectly. The most common model is a board of directors which makes all major decisions for the corporation, in theory serving the best interests of the individual shareholders.

Well, somebody has got to make the business decisions for the corporation. In a small corporation, like one person corporations or like a limited partnership, the small group of folks is generally involved directly in the corporations business, looking over each other's shoulders, and making the decisions, and they can generally fend for themselves because they're right there. That's probably why a Limited Partnership is restricted to 25 members who gotta be in the same state. Them small corporations ain't regulated much on account of the Government figures the folks investing are right there and they ain't gonna let the other fellows get away with bad decisions or crooked deals.

Now more folks belonging to the corporation means more money available to do business, but the rub is there's too many folks for everybody to be intimately involved. So you can have officers (like a President, Secretary, Treasurer, etc.) and a board of directors to make the decisions. Ideally, the officers run the day to day business, and the board of directors meet once in a while with the officers to make big decisions. The directors are usually selected by the shareholders and in a way represent them. Ideally, the officers and directors try to make the decisions that are the most beneficial to the company's business and thus the shareholders. As a matter of fact, they've got a responsibility to act in the company's and shareholder's best interest, and that's called a fiduciary responsibility. But because the shareholders are separated from the business decisions and dealings there's an opportunity for abuse 'cause the officers and directors can take advantage of the situation and swindle the investors (a bunch of money coming in and the investors aren't looking over their shoulders). So, over the years, as abuse has happened, the Government has stepped in and made a bunch of rules to keep it all on the up and up (and crooks get around them rules, so the Government makes more rules, and on and on). But the laws and the rules are intended to protect the shareholders that's putting up the money to run the corporations that support the economy.

Now for them directors to make the best decisions, they've got to know everything about the company and its business. And ideally they act as a check and balance on each other and the officers as they argue and discuss the decisions to be made.

So Explorations Inc. hummed along for a few years until the corporation was getting bogged down as the structure of the original company met with difficulties operating with the number of investors it now had. So, to clean up the mess, the officers and directors decided to start afresh with a new company, and roll the old company over into the new company in August, 2006. (Kokoweef Inc. was incorporated in May, 2004 and the Plan of Reorganization was in August, 2006).

Now this is how I see it: Ted was on the Board of Directors and he got some well-to-do folks to invest in Kokoweef and he got to thinking "I'm on the board, so I've got this fiduciary responsibility, and I don't know the stuff about the company I ought to know to be able to make responsible decisions, like how many investors we have, what money is coming in and going out, where it's coming from and going to, and where the company is with respect to the change over from Explorations Inc. to Kokoweef Inc. I had better find out". So he started asking questions, but claims he wasn't getting answers. And he started wondering if the company was on the up

and up, because as a board member, he's got some responsibilities that could be a liability if somebody like one of them well-to-do investors decides he wants to sue. If the company's squared up then a lawsuit ain't much of a problem; the fellow bringing the suit isn't going to get to first base. But if the company doesn't have most of its ducks in a row there could be trouble. So Ted stirred the pot trying to assure that the company was OK. But he felt he wasn't getting the information he needed to determine if the company was OK. And the little he did find out made him more concerned. So he figured he'd better do something to assure the investments that had been made were being handled in the investor's best interests. The only avenue he felt he had left was to bring a court action. Was he right or wrong? Well, when the smoke finally clears and the lawyers have got a bunch of everybody's money, we are going to probably have enough evidence to see for ourselves if the company was run on the up and up (albeit with some sloppy accounting), or if the company was doing stuff contrary to the law just because they didn't know any better, or if there was some skullduggery afoot and somebody was ripping off the investors.

So how does someone go about bringing a legal action against a corporation when they're a part of it? A **shareholder derivative suit** is a lawsuit brought by a shareholder on behalf of a corporation against a third party. Often, the third party is an insider of the corporation, such as an executive officer or director. Shareholder derivative suits are unique because under traditional corporate law, management is responsible for bringing and defending the corporation against a suit. Shareholder derivative suits permit a shareholder to initiate a suit when management has failed to do so. Because derivative suits vary the traditional roles of management and shareholders, many jurisdictions have implemented various procedural requirements to derivative suits.

While, under traditional corporate law, shareholders are the owners of a corporation, they are not empowered to control the day-to-day operations of the corporation. Instead, shareholders appoint directors, and the directors in turn appoint officers or executives.

Derivative suits permit a shareholder to bring an action in the name of the corporation against the parties allegedly causing harm to the corporation. If the directors, officers, or employees of the corporation are not willing to file an action, a shareholder may first petition them to proceed. If such petition fails, the shareholder may take it upon himself to bring an action on behalf of the corporation. Any proceeds of a successful action are awarded to the corporation and not to the individual shareholders that initiate the action.

In most jurisdictions, a shareholder must satisfy various requirements to prove that he has a valid standing before being allowed to proceed. The law may require the shareholder to meet qualifications such as the minimum value of the shares and the duration of the holding by the shareholder; to first make a demand on the corporate board to take action; or to post bond, or other fees in the event that he does not prevail.

So, in March of 2008 Ted and bunch of other folks who think the company business ain't on the up and up file a Verified Derivative Complaint. Now there's a bunch of stuff in that Complaint 'cause they not only have they gotta provide some background info for the court, they've also got to state as clearly as they can (with just the information they have available) what they

believe is legally wrong with the company's dealings. In other words, you can't just say "I don't like the way the business is run and I think the guy's a crook"; you have to specify some charges where laws were broken. And so too, a short explanation and history of the company is provided to the court so they can understand the context of the charges. So you've got to drill down to Paragraph 62 of that Complaint to finally get to the charges which are:

Breach of Fiduciary Duty (Larry wasn't acting in the best interests of the company or its investors),

Aiding and Abetting (Hahn's World of Surplus store is mixed up in this thing),

Unjust Enrichment (Larry and the store were getting money from the Kokoweef company that they shouldn't have),

Constructive Fraud (Larry and the other folks were lying about and/or hiding information about Kokoweef's business),

Corporate Waste and Gift (Larry and other folks wasted Kokoweef's money/assets or gave it to other people for non-Kokoweef purposes),

Gross Mismanagement (this one is kind of a catch-all saying Larry and other folks didn't handle the business in the right way),

Violation of Securities Laws (Larry sold shares illegally and knew it was illegal when he sold them).

And then there's a short section that says the Plaintiffs (Ted and his other folks) want the court to make Larry and the other defendants pay back all the money that allegedly got misdirected plus some more to pay off the attorneys. And after that are some Exhibits to provide information and help establish the case.

That was the opening salvo. Then Larry's lawyers fired back in April 2008 telling the court that what Ted is doing ain't gonna benefit the company or the investors, and the court ought to make Ted put up a bunch of money before they go to fighting in court so that Larry and Kokoweef can get paid back for defending themselves against those charges. And that's actually a pretty good thing because the courts need some way of discouraging "frivolous" court actions or court actions started just to harass somebody. So the court can require the Plaintiff to post a bond, a kind of put-your-money-where-your-mouth-is deal, so if the Plaintiff (Ted) is full of baloney the money goes to the Defendant (Larry) so the defendant can recoup the money he spent for the defense; and if the Plaintiff prevails (Ted wins) then the money is returned.

So the court has to decide how much the bond should be: it's gotta be big enough to make sure the Plaintiff is serious about the legal action (that means it's gotta hurt if he loses), and it's gotta be small enough that a serious legal action isn't stopped just because the Plaintiff can't come up with the money. So the court kinda has to decide what that amount should be based on the case: if the judge thinks the case doesn't have much merit and/or it looks like the Plaintiff(s) is rich,

it's gonna be big; or if the judge thinks the case needs to be heard and/or the Plaintiff(s) don't have a bunch of money, it's gonna be small. So the lawyers get in the middle of the process and try to convince the judge with the info at hand that the case does or does not have a lot of merit.

Larry removes Burke, Kehoe, and Dutchik from the Board of Directors, Ted's position is that ain't legal, Larry's lawyer presents the bylaws of Kokoweef Inc. that shows it is legal and the document (15 pages) was signed by Ted Burke himself on December 10th, 2006, Ted says that signature was forged and he was with his family that day and couldn't have signed it and presents the original document (12 pages, dated July 11th, 2007), and 4 days later presents the copy that had been initialed by the Board in Larry's office and signed by Ted and Larry on July 11th, 2007, and Ted's side also includes a statement from Talon Stringham, a forensic accountant, that says it looks like something ain't right with the corporation, then Larry's bunch had Reta Van Da Walker do an affidavit that said the books looked OK to her, and later in July, Talon Stringham comes up with another statement saying things ain't right. And they fought about that pretty much all through the summer of 2008, trying to convince the judge that there was or wasn't wrongdoings and thus the bond otta be small or big, and in September Ted put up a \$75,000 bond and got some different attorneys.

And in all that wrangling, some pretty interesting things came to light. There were investors that claimed they didn't receive notice of a shareholder mtg (required by the by-laws). Larry wanted the kokoweef.com web site closed down (that's the web site where all the available court documents are posted). Ken Wright claimed he didn't get all the shares he had coming. And Ted Burke presented an affidavit explaining his position (if you want to know why Ted started the court action, read this one: 07/30/2008, Affidavit of Ted R. Burke (dated July 29, 2008)).

Ted's new attorneys got busy and filed an amended complaint that stated 10 Causes of Action:

1. Unlawful Sale of Unregistered Securities
2. Unlawful Sale of a Security by Means of a Scheme to Defraud
3. Fraudulent Misrepresentation
4. Negligent Misrepresentation
5. Fraud in the Inducement (inducement to purchase shares)
6. Fraudulent Concealment
7. Breach of Fiduciary Duty
8. Unjust Enrichment
9. Constructive Fraud

10. Corporate Waste

Then both sides got busy arguing about whether Clary, the attorney for Kokoweef Inc., ought to be charged with something, or whether or not he should represent Kokoweef Inc., whether the new Amended Complaint should go forward or not, whether or not Larry's side ought to stop operating 'cause Ted's side says the company's assets might get used inappropriately and the company records could get altered. And the lawyers argued about the laws and interpretation of the laws that pertain to all that stuff, and how all of that applies to this case.

Well, in January of 2009 the court made some decisions on the matter. And here's what the judge said about those charges in the Amended Complaint:

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| 1. Unlawful Sale of Unregistered Securities | Dismissed with prejudice |
| 2. Unlawful Sale of a Security by Means of a Scheme to Defraud | Dismissed |
| 3. Fraudulent Misrepresentation | Dismissed |
| 4. Negligent Misrepresentation | |
| 5. Fraud in the Inducement (inducement to purchase shares) | Dismissed |
| 6. Fraudulent Concealment | Dismissed |
| 7. Breach of Fiduciary Duty | |
| 8. Unjust Enrichment | |
| 9. Constructive Fraud | |
| 10. Corporate Waste | |

Now this business of dismissed or not dismissed doesn't have anything to do with the guilt or innocence in relation to the charges; the Judge is saying those charges aren't going forward because they don't meet the legal criteria to go forward. So that left 5 Causes of Action to be considered.

Following that, Larry's group got around to answering those allegations, both sides started lining up their evidence and witnesses, Ted's side tried to get more information on the financial records of the company and the Surplus Store, and it turned into a real wrestling match with the lawyers on Larry's side saying Ted's side ain't really got a case and they don't need to see all those records, and Ted's lawyers claim they gotta have them records. Larry's side even tried a few times to get a Summary Judgement. In law, a **summary judgment** is a determination made by a court without a full trial. Such a judgment may be issued as to the merits of an entire case, or of specific issues in that case.

In common law systems, the interpretation of that law, that is to say, any question as to what the law actually is in a particular case, are decided by the judge; in rare cases jury nullification of the law may act to contravene or complement the instructions or orders of the judge, or other officers of the court. A factfinder has to decide what the facts are and apply the law. In traditional common law the factfinder was a jury, but in many jurisdictions the judge now acts as the factfinder as well. It is the factfinder who decides "what really happened," and it is the judge who applies the law to the facts as determined by the factfinder, whether directly or by giving instructions to the jury.

Absent an award of summary judgment (or some other type of pretrial dismissal), a lawsuit will ordinarily proceed to trial, which is an opportunity for each party to present evidence in an attempt to persuade the factfinder that such party is saying "what really happened," and that, under the judge's view of applicable law, such party should prevail.

The necessary steps before a case can get to trial include disclosing documents to the opponent by discovery, showing the other side the evidence, often in the form of witness statements. This process is lengthy, and can be difficult and costly.

A party moving (applying) for summary judgment is attempting to avoid the time and expense of a trial when the outcome is obvious. A party may also move for summary judgment in order to eliminate its risk of losing at trial, and possibly avoid having to go through discovery, by demonstrating to the judge, by sworn statements and documentary evidence, that there are no material issues of fact remaining to be tried. If there's nothing for the jury to decide, then, the moving party asks rhetorically, *why have a trial?* The moving party will also attempt to persuade the court that the undisputed material facts require judgment to be entered in favor of the moving party. In many jurisdictions, a party moving for summary judgment takes the risk that, although the judge may agree there are no material issues of fact remaining for trial, the judge may also find that it is the *non-moving* party who is entitled to judgment as a matter of law.

All this legal back and forth really kind of boils down to the fact that to proceed with this court action, the defendants (Larry's side) need to produce the records for examination so the Court and everybody else can see them and determine if the company was run legally. And the defendants were dragging their feet the whole way. It seems as though the defendant's game plan was to delay as much as they possibly could. And that strategy is designed to run the opposition out of money to the point they don't continue with the case. I've heard that was even stated at a shareholder's meeting. From the affidavit of Paul Barnard and another affidavit of Paula Barnard, they were at the shareholders meeting of June 1, 2008 and they both stated: That after Ted Burke and his attorney left the premises, I personally heard Mr. Patrick Clary state to the approximately 100 remaining shareholders present: "Here is our strategy, we are going to stall the case and continue stalling the case until the plaintiffs run out of money and are no longer able to continue the case."

As an investor, that doesn't sound to me like a fair way to deal with this thing. As an investor, what I'd like to have is a company that is legally viable, that can say to the court "here's the company papers and records, here's how we conducted our business, maybe it isn't done perfectly, but by and large we followed the rules, and we tried to do right by the investors", or

alternately, “here’s the company papers and records, we screwed some stuff up, but we’re going to correct it and make it right”. What I’d like to see is a company that’s set up so that when they get a character like Ted who noses into the business, the company can explain and will explain the ins and outs of the issues raised, and answer the questions that come up. And if such a character insists on taking the issue to court, the company papers and records can be gathered and shown to the court, and the court can see that there isn’t a legal issue. Well, I know it isn’t as simple as all that, but I do wonder if Kokoweef’s company papers and books were all on the up and up, why don’t Larry’s side just produce them so we can get on with the show? All this delay makes you wonder if they’ve got something to hide.

Clear back in 1990, Explorations Inc was involved in a matter with the Nevada Securities and Exchange Commission. It was supposed that an unhappy investor had complained to the Commission and the company was investigated. The company retained a lawyer, Marsha (Martha?) Ashcroft, and there were meetings. I encouraged Larry and the Directors to set up the company completely legal then so there would be no cloud hanging over the company, but Larry chose to defend the company as it was and a lot of money was spent on lawyers to suppress the problem, but the problem remained. Somehow, Larry and a few others got the idea that I was one of the guys who reported the company to the SEC and I was ostracized by them for a few years. I had no involvement in any reporting to the SEC, but once the issue had been raised, I was very interested in getting the company on an unquestionably solid legal footing so we could go forward with our explorations without fear of legal hassles should we find something. I remember expressing the opinion at that time “The way the company is set up, if we ever do find any gold, we’ll be in lawsuits for so long, none of us will ever profit from the gold.”

Well, according to the May 2006 newsletter gold was found, and in March 2008 we were in a lawsuit.

Now this company wouldn’t even exist and maybe the Kokoweef treasure hunt wouldn’t have survived to this point if it hadn’t been for Larry Hahn seizing the moment back in 1984 and starting the company. And that was a lot of hard work and effort from a guy that was running a store during the day and was a maitre’d in the evenings, and a lot of his effort and money went into the company. And his charisma helped get a lot of folks involved, and I recognize and applaud that charisma and those efforts. I cherish the friendships and memories that I’ve developed out there over the years. But I sure wished the company had done a better job of keeping the books and paying attention to the legal matters. If Larry had let the Board of Directors function as they ought to have functioned, and had given them the information directors are supposed to have to govern the company, I don’t reckon there would be all this trouble brewing now. And I say that knowing full well it’s a whole bunch more convenient to run a company with one guy calling the shots where you don’t have to bother with meetings, discussions/arguments, and paperwork; but then you don’t get the benefit of the checks and balances provided by a Board of Directors.

So, if us investors had our druthers, what kind of company would we like to see emerge out of all this strife? I don’t know about you, but I’d like to have a company that is run on the up and up; one that is founded on firm legal ground and can go forward without a cloud hanging over it. I don’t know exactly how to accomplish that, but I know it isn’t going to happen unless the

leadership changes their position and attitude that all legal matters pertaining to the company can be taken care of retroactively once the River is found (the recent court activity proves the fallacy of that!) or unless the leadership changes. I don't know if the investors have much if any say in the way the court case is going to turn out, but there may be an opportunity to provide input and make our wishes known when the dust clears after the battle.

Well, back to the case. In January 2011 Ted's side got a an experton securities law, Edwin Apenbrink, to look things over and he wrote an affidavit saying that the stock dealings were illegal from the git go, and making a new company didn't clean them up, and even after the new company was up and running the stocks were done illegally. Then when more of Kokoweef's records were obtained and seemed to confirm the views of the forensic accountant, Talon Stringham, and the securities expert, Edwin Apenbrink, Ted's side filed a Motion for Leave to File Second Amended Complaint to Conform to the Evidence. That document said Ted's side has now got the evidence that supports another Cause of Action (well, actually a Cause of Action already pleaded and then dismissed previously) so now there are 5 causes of action (I don't know what happened to the old #9 Constructive Fraud) and here they are:

1. Civil Liability pursuant to NRS90.660 for Sale of Unregistered Securities
2. Negligent Misrepresentation
3. Breach of Fiduciary Duty
4. Unjust Enrichment
5. Corporate Waste

So, is anything wrong with the way the company was run? Well, if it had been run right, we wouldn't be in this mess. But was it illegal? And if it was/is illegal, did Larry knowingly operate it illegally, or was he intentionally misled by Clary, or was Clary just making a haywire interpretation of the securities laws? At the very least, the bookkeeping wasn't properly done. Well, if Ted don't quit (and it don't look like he's a quitter) we might just find out. At any rate I think in the end Ted will have done the investors a real favor in bringing these things to light, and I think because of that, we are going to be provided the opportunity to have a clean company. If Larry wins this thing, I hope we can stand united and demand a clean company with a fully functioning Board of Directors and registered stock. And if Ted's side wins, I'm sure we will have that solid company. And if we do ever find that River of Gold, we will be thanking Ted we've got a viable company to handle it.

And we'll be thanking Ken Wright and especially Richard Dutchik for providing all the information pertinent to the case. Ken & Richard have done a lot of work setting up and maintaining the website. Richard Dutchik has been a steady rock in a turbulent stream in providing timely information of the court proceedings. Originally lauded and later denigrated by Larry for establishing the Kokoweef.com website that informed the investors and the world about our doings, Richard steadfastly refused to withhold information from the investors as this court business started up, refused to back down when Larry tried to sue to close it down, and

refused to let Ted have free rein in publishing biased statements, or in publishing court documents before they were made publically available by the court. Thanks, Richard and Ken, for providing information and a forum for investor's viewpoints. Although I know you both have strong opinions on the case, you have chosen to publically mute those passions to let the facts speak for themselves, which may be the most direct path to the truth in this matter.

If anybody wants to yell at me directly for the opinions I've expressed here's my e-mail address:

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Well, that's my view from way up in South Dakota,

Jim Hanhardt