

ORIGINAL

CLERK OF THE COURT

AUG 11 1 08 PM '08

FILED

Neil J. Beller, Esq.
NEIL J. BELLER, LTD.
Nevada Bar No. 002360
7408 W. Sahara Ave.
Las Vegas, Nevada 89117
(702) 368-7767
(702) 368-7720 Facsimile
Attorney for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

TED R. BURKE; MICHAEL R and LAURETTA)
L. KEHOE; JOHN BERTOLDO; PAUL)
BARNARD; EDDY KRAVETZ; JACKIE and)
FRED KRAVETZ; STEVEN FRANKS; PAULA)
MARIA BARNARD; PETER T. and LISA A)
FREEMAN; LEON GOLDEN; C.A. MURFF;)
GERDA FERN BILLBE; BOB and ROBYN)
TRESKA; MICHAEL RANDOLPH, and)
FREDERICK WILLIS,)

Case No. A558629
Dept. XIII

Plaintiffs,

vs.

LARRY L. HAHN, individually, and as President)
and Treasurer of Kokoweef, Inc., and former)
President and Treasurer of Explorations)
Incorporated of Nevada; HAHN'S WORLD OF)
SURPLUS, INC., a Nevada corporation; DOES)
I - X, inclusive; DOE OFFICERS, DIRECTORS)
and PARTICIPANTS I - XX,)

Defendants,.

and

KOKOWEEF, INC., a Nevada corporation;)
EXPLORATIONS INCORPORATED OF)
NEVADA, a dissolved Nevada corporation;)

Nominal Defendants.

PLAINTIFFS' SUMMARY OF EVIDENCE PRESENTED

AT EVIDENTIARY HEARING ON JULY 30, 2008

LAW OFFICES
NEIL J. BELLER, LTD.
A PROFESSIONAL CORPORATION
7408 WEST SAHARA AVENUE
LAS VEGAS, NEVADA 89117
AREA CODE 702-368-7767

1 COMES NOW Plaintiffs' by and through their attorney, Neil J. Beller, Esq., and, pursuant
2 to this Court's request, submit their summary of the evidence presented at the evidentiary hearing
3 on July 30, 2008.

4 **The Evidence Presented by Plaintiffs at the Evidentiary Hearing**
5 **Supports Their Opposition to Kokoweef, Inc.'s Motion to Require Security,**
6 **and Therefore, No Security Should be Required by Plaintiffs**

6 NRS 41.520 provides in pertinent part:

7 3. In any such action, at any time within 30 days after service of
8 summons upon the corporation or any defendant who is an officer or
9 director of the corporation, or held such office at the time of the acts
10 complained of, the corporation or such defendant may move the court
11 for an order, upon notice and hearing, requiring the plaintiff to furnish
12 security as hereinafter provided. Such motion must be based upon or
13 more of the following grounds:

11 (a) That there is no reasonable possibility that the prosecution of the
12 cause of action alleged in the complaint against the moving party will
13 benefit the corporation or its security holders;

13 Kokoweef, Inc.'s motion was brought "on the ground that there is no reasonable possibility
14 that the prosecution of the cause of action alleged in the Plaintiffs' Complaint against the Company
15 will benefit the Company or its security holders." [Page 2, lines 9-12 of its Motion.]

16 The claims for relief in Plaintiffs' Complaint are all against the Defendants for:

- 17 1. Breach of Fiduciary Duties
- 18 2. Aiding and Abetting
- 19 3. Unjust Enrichment
- 20 4. Constructive Fraud
- 21 5. Corporate Waste and Gift
- 22 6. Gross Mismanagement
- 23 7. Violation of Securities Law

21 **Testimony of Plaintiffs' Expert**

22 Plaintiffs' expert, Talon Stringham, a Certified Public Accountant, and a Certified Fraud
23 Examiner, among other certifications, testified to many "red flags" and "indicia" of fraud that he
24 observed in the books and records of Explorations of Nevada, Inc. (EIN) and Kokoweef, Inc.
25 Although Mr. Stringham testified that at this time, he could not definitively prove fraud, he also
26 testified that in his professional opinion, based on his examination of EIN and Kokoweef, Inc.'s
27 books, that fraud did occur.

28 Mr. Stringham cited evidence of fraud that included, but not limited to:

- 1 1. Funds have been exchanged between related entities as follows:
- 2 a. \$23,250 was paid from Kokoweef to EIN between May 2, 2006, and August 31,
- 3 2007. Of that amount, \$8,250 was paid after the date of the Closing Agreement, Assignment and
- 4 Receipt, which is dated August 31, 2006.
- 5 b. \$26,492.39 in checks were issued checks from EIN to Hahn's World of Surplus
- 6 c. \$14,384.30 in checks were issued checks from Kokoweef to Hahn's World of Surplus
- 7 2. \$53,387.76 in checks were issued from EIN payable to various individuals or cash,
- 8 but upon inspection of the cancelled check were found to have been diverted and instead deposited
- 9 into a Hahn's World of Surplus account.
- 10 3. \$8,697.77 in checks were issued from Kokoweef payable to various individual or cash
- 11 but upon inspection of the cancelled check were found to have been diverted and instead deposited
- 12 into a Hahn's World of Surplus account.
- 13 4. \$96,373 of EIN mine receipts are not recorded in the EIN QuickBooks for the period
- 14 December 2004 and September 2005.
- 15 5. \$221,489 EIN transactions are recorded in the EIN QuickBooks which have not been
- 16 supported by the mine receipts for the period December 2004 and September 2005.
- 17 6. \$56,802.61 in expenses in EIN's QuickBooks appear to be non-business related
- 18 (personal expenses) for the period of January 2003 through December 2007.
- 19 7. \$41,467.83 in expenses in Kokoweef's QuickBooks appear to be non-business related
- 20 (personal expenses) for the period of January 2003 through April 2008.
- 21 8. EIN and Kokoweef either have not adequately maintained a proper accounting of the
- 22 stockholder equity accounts, or if they have, adequate information has not been produced to confirm
- 23 that such a proper accounting has taken place.
- 24 9. The method in which Kokoweef recorded the reorganization of EIN into Kokoweef
- 25 was done incorrectly. Various accounts were not closed out as intended, and the method in which
- 26 Kokoweef recorded the assets would potentially constitute tax fraud in the amount of roughly \$2.4
- 27 million.
- 28

1 10. Neither EIN or Kokoweef has adequately tracked shareholder information, such as
2 name, number of shares and/or amounts contributed in its QuickBooks. The QuickBooks for both
3 entities also include a category for "Investment Return" which indicates that some shareholders
4 received a return of their investment. This may indicate preferential treatment for such shareholders.
5 The account detail lists 27 individual, whose investments were returned for some reason. It is highly
6 suspicious, (perhaps indicative favorable treatment towards certain shareholders), that any
7 investment were returned at all.

8 **Testimony of Defendant Kokoweef's Expert**

9 Ms. Van Da Walker testified that she netting entries when she kept the books and records of
10 EIN and Kokoweef, Inc. She also testified that she made errors in recording the transaction wherein
11 EIN was reorganized into Kokoweef, Inc. Additionally, she testified that the tax returns for
12 Kokoweef, Inc. had not been filed and that previous years' tax returns needed to be amended.

13 Thus, the books kept by EIN and Kokoweef, Inc. have not been kept in accordance with
14 Generally Accepted Accounting Principles [GAAP] because GAAP requires that each individual
15 entry be recorded. Because the books are not in accordance with GAAP, the shareholders are at a
16 disadvantage when comparing the books of EIN and Kokoweef, Inc. to alternative investment
17 opportunities. Further, the netting of entries in effect conceals some entries from the books which
18 prevents scrutiny of such transactions. The admission by Ms. Van Da Walker that she made errors
19 in recording the transaction where EIN was reorganized into Kokoweef, Inc., tends to suggest that
20 other errors might have been committed in the books and records.

21 **Testimony of Defendant Larry Hahn**

22 Mr. Hahn testified that EIN and Kokoweef, Inc. has lost between 300 and 400 shareholders.
23 Thus, at this time, it is not known exactly how many shares are outstanding to how many
24 shareholders and what percentage each shareholder owns of Kokoweef, Inc. Further, this lack of
25 information relates to the SEC issue in determining whether the sale of unregistered securities has,
26 in fact, occurred. Needless to say, as a result of the lost shareholders, Mr. Hahn, as President of
27 Kokoweef, Inc. has failed in his responsibility to the shareholders. There can be no doubt that by
28 Plaintiffs' commencing this action, all the shareholders will benefit as a result of this litigation.

1 **Transcript of Meeting on September 18, 2007**

2 In addition to the testimony and evidence presented at the Evidentiary Hearing, Plaintiffs
3 have on several occasions attached a copy of the Transcript of the meeting that occurred on
4 September 18, 2007 (when Ted Burke was invited to attend a meeting with Mr. Hahn and corporate
5 counsel, Patrick Clary, Esq.) to their pleadings and other papers filed with this Court. Following
6 is a brief summary of pertinent parts of that transcript:

7 When the question was asked as to why Kokoweef was formed, the answer was that it was
8 for cleaning up the securities violations of EIN. Page 11, lines 5 - 19 of the Transcript of the
9 September 18, 2007 meeting attached as **Exhibit 1** and incorporated herein by reference. Corporate
10 counsel stated that probably 90% of the securities transactions weren't conducted lawfully in EIN,
11 but the statute of limitations had run. (Page 20, lines 20 to page 21, line 3 of Transcript.) Mr.
12 Burke then suggested he might go to the SEC to report what he believed to be improper operations.
13 Derogatory comments were made regarding the SEC by corporate counsel, and that the idea of going
14 to the SEC was insane. (Page line 9 - page 13, line 20 of the Transcript) Corporate counsel stated
15 they did a Rule 504 Regulation D because the stock that was exchanged isn't worth more than a
16 million dollars to the aggregate in a 12 month period and this was done subsequent to the
17 reorganization and also they had to find a state exemption and they are limited to 25 Nevada
18 residents. (Page 24, line 19 - page 25, line 14 of the Transcript.) Corporate counsel stated they need
19 to do some clean up work on the out of state ones, but that most states have an exemption for
20 isolated transactions. (Page 26, line 11 - 23 of the Transcript.) Mr. Hahn stated they have 1200
21 shareholders. Corporate counsel said Nevada had an exemption for reorganizations and that is what
22 he filed. The discussion then turned to shareholders suing the corporation and its officers and
23 directors for securities fraud. Corporate counsel stated that would be an uphill battle because of the
24 provision in the agreement with the shareholders that they acknowledge they have complied with the
25 securities rules. (Page 27, line 5 - page 28, line 3 of the Transcript.)

26 Mr. Burke expressed concern that something may be in the books that may be found and
27 would result in being sued. The answer given was that if something is wrong it would be corrected
28 or make it go away. That is being done for Kokoweef and the statute of limitations has expired for

1 EIN. Mr. Burke was told that his only concern would be for the past two years. (Page 30, line 12 -
2 page 31, line 23 of the Transcript.)

3 The discussion turned to the matter of money being collected under Kokoweef and that
4 representations were made that the money was used for investment and it was actually used for
5 something else. When they were taking money in for Kokoweef, they were also taking in money for
6 EIN and Mr. Burke was concerned of the EIN transactions and that's why he wants the EIN books.
7 (Page 34, line 9 - page 37, line 19 of the Transcript.)

8 **Plaintiffs Should Not Be Required to Post Security**

9 Based on the evidence presented by Plaintiffs and the statutory requirement that Defendants
10 prove that "there is no reasonable possibility that the prosecution of the cause of action alleged in
11 the complaint against the moving party will benefit the corporation or its security holders", there can
12 be no doubt that Plaintiffs have presented sufficient evidence to prove that the allegations in the
13 Complaint will benefit the corporation and its shareholders. The burden is on the Defendants to
14 show that Plaintiffs' claims will not benefit the corporation. Nominal Defendant Kokoweef failed
15 to provide evidence to support its motion. Thus, the motion to require security should be denied.

16 **Nevada Case Law Regarding the Issue of Defendants
17 Bringing another Motion for Security Later in This Action**

18 Plaintiffs' counsel has researched this issue on Westlaw. No Nevada Supreme court opinion
19 regarding NRS 41.520 has discussed the issue of whether or not a defendant would be permitted to
20 bring a second motion for security if new evidence was discovered to show that the complaint
21 against the corporation would not benefit the corporation or its shareholders.

22 DATED this 6th day of August, 2008.

23 NEIL J. BELLER, LTD..

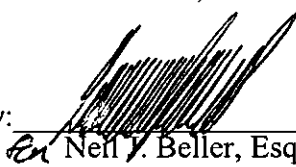
24 By: 
25 Neil J. Beller, Esq.
26 Nevada Bar No. 002360
27 7408 West Sahara Avenue
28 Las Vegas, NV 89117
(702) 368-7767
Attorney for Plaintiffs

EXHIBIT "1"

1 MR. BURKE: Oh.

2 MR. CLARY: It's been postponed.

3 MR. BURKE: Okay. You can do that and --

4 MR. CLARY: Sure.

5 MR. BURKE: Sure. Okay.

6 MR. HAHN: Absolutely.

7 MR. BURKE: Okay. That's fine.

8 MR. CLARY: And, so -- I mean -- so I -- I -- I

9 think, basically, my -- my advice to you would be -- basically,
10 I think Larry's kind of complied with everything, but maybe
11 this one document --

12 MR. BURKE: Yeah, yeah.

13 MR. CLARY: -- the journal, so-called journal. I
14 think it's pretty (indiscernible) --

15 MR. BURKE: Now, here's the, you know, as Richard and
16 I talked about the whole purpose of forming that new
17 corporation was for what purpose?

18 MR. CLARY: We -- we have to (indiscernible).

19 MR. BURKE: Well, what are we cleaning up?

20 MR. CLARY: Cleaning up the securities violations.

21 MR. BURKE: Okay. So we had securities violations
22 that we could possibly be held liable for as it's board
23 members?

24 MR. CLARY: Yes.

25 MR. BURKE: Okay. And that's our concern. That's