

1 LAS VEGAS, NEVADA, TUESDAY, MARCH 30, 2010, 9:09 A.M.

2 (Court was called to order)

3 MR. SEGEL: Good morning, Your Honor. I'm Nelson
4 Segel, counsel for defendants Larry Hahn.

5 THE COURT: Wait. We're going to start with Ms.
6 Taylor.

7 MR. SEGEL: I was waiting, Your Honor --

8 THE COURT: We start over there.

9 MR. SEGEL: -- but you wanted us to get moving. All
10 right.

11 THE COURT: Ms. Taylor, if you could identify
12 yourself and move across the room.

13 MS. TAYLOR: Yes, Your Honor. Good morning, Your
14 Honor. Jennifer Taylor on behalf of plaintiffs.

15 MR. ROBERTSON: 'Morning, Your Honor. Alex
16 Robertson on behalf of plaintiffs.

17 MR. SEGEL: M. Nelson Segel, counsel for Larry --
18 defendant Larry Hahn and Hahn's World of Surplus. And Mr.
19 Hahn is present, as well.

20 MR. CLARY: Patrick Clary, counsel for Kokoweef and
21 for myself.

22 THE COURT: Thank you.

23 Well, Mr. Segel?

24 MR. SEGEL: Your Honor, you want to do our motion
25 for summary judgment first, I guess.

1 THE COURT: I do.

2 MR. SEGEL: Okay.

3 MR. CLARY: Whose summary judgment, mine or his?

4 THE COURT: Well, I guess I don't want to really do
5 the summary judgment first. Let me do it a little
6 differently. I want to do the motion to compel first. And I
7 want you to tell me why I don't want to hear it. I don't
8 remember which of you said that I shouldn't hear it.

9 MR. SEGEL: That was -- Your Honor, it's not that we
10 don't want you to hear. I guess you're going to hear it no
11 matter what.

12 THE COURT: Absolutely.

13 MR. SEGEL: But the issue that we raised in our
14 opposition, and it was -- the motion to compel is against
15 Kokoweef. I know they keep talking about my client's
16 responsibilities at present, but it wasn't addressed to him.
17 Mr. Clary responded. He left for a cruise, unfortunately,
18 right when that was due, and so I did a little extra work
19 because I felt it was important.

20 The problem we have in this case, this discovery
21 motion is a perfect example, the plaintiffs do what they want
22 to do. They don't follow the rules of procedure, they don't
23 follow what the Court's telling them to do. And in this case
24 in discovery issues, and we had a Rule 16 conference with
25 Judge Denton, counsel specifically asked Judge Denton to take

1 over discovery. Judge Denton said, no.

2 Then we came before Your Honor on our motion to
3 transfer, and you enlightened us on why you wouldn't transfer
4 the case. And that's fine. And counsel again said, hey,
5 Judge, will you do discovery. And you asked Mr. Clary and I
6 to stipulate this was a complex case. While there are issues
7 in this case, it's far from complex, and we refused. And you
8 then instructed plaintiffs' counsel to file a motion to
9 determine it's a complex case and then you'd take over
10 discovery.

11 THE COURT: Sure.

12 MR. SEGEL: It was never done. Then they filed a
13 motion in front of Judge Denton, Department 13 -- speak to
14 your assistant and are told that, just leave it here. You
15 continued at our request for oral argument, so we're here
16 before you. So, you know, the issue of it was noticed to the
17 right department or not is not really a big issue. But the
18 whole point is that the rules and the case that I cited
19 specifically say that unless this case has been determined to
20 be complex, the Discovery Commissioner has to do discovery
21 motions.

22 THE COURT: True.

23 MR. SEGEL: You know, if it had been a motion to
24 determine as complex, we would have opposed that concept. And
25 if this Court decided it was going to take over discovery, we

1 have no objection to that. We have no issues with you ruling.
2 It's just, as we'll get into my motion for summary judgment,
3 there are rules of procedure. I used to live and die by the
4 rules. Very few judges enforce them anymore. I think you do
5 more than most. But I --

6 THE COURT: But still not as much as you want.

7 MR. SEGEL: Well, probably not. But, you know, no
8 one ever gets what they want, Your Honor. You're the best.
9 And hopefully we'll convince the Judge that we're right.

10 The key here is that we find ourselves -- it's
11 very difficult to defend a case like this one when we have
12 no clue what they're asking for -- and we'll talk about that
13 in my summary judgment motion -- and, two, when they don't do
14 what the rules require us to do. And so if you believe that
15 the cases that I cited are wrong and that you in fact have
16 the right sua sponte to take control of discovery, you'll hear
17 the motion. If you believe that the cases I cited and the
18 rules --

19 THE COURT: Well, I don't care. I've been told by
20 the Supreme Court in Business Court cases that they would
21 prefer that the Business Court judges handle discovery. You
22 know, that's okay. I don't care. It's either a one-step
23 process or a two-step process. I'm going to handle discovery
24 whether you go to the Discovery Commissioner first and then we
25 have a full-blown hearing up here -- that's how we're going to

1 do it. We're going to do it one way or the other. And we're
2 going to do it before we do the motions for summary judgment.

3 MR. CLARY: I didn't hear that last thing you said,
4 Your Honor.

5 THE COURT: We're going to finish the motion to
6 compel one way or the other before I hear the summary judgment
7 motion.

8 So do you want me to hear it, or do you want to go
9 to Commissioner Bulla and have her hear it and then you come
10 back up here and I rule on whatever objection comes out of
11 Commissioner Bulla?

12 MR. SEGEL: Well, Your Honor, since Mr. Clary's
13 counsel for Kokoweef, he just said to me, and I don't
14 disagree, we'll let you hear it. I do have some issues you
15 might want to have some supplemental briefing on on the issue,
16 if you don't mind, but --

17 THE COURT: That's fine. How long do you need?

18 MR. SEGEL: Well, I just -- I thought we could do
19 the arguments, Your Honor. Based on the arguments I may --
20 you know, there may be some issues that arise.

21 THE COURT: No. I like to have the briefing full
22 before you argue.

23 MR. CLARY: Well, but, Your Honor, the fact that we
24 -- the fact that we agree you could hear it doesn't mean we
25 consent to its being granted, obviously.

1 THE COURT: No. I know. That was why we wanted to
2 argue it.

3 MR. CLARY: We'll argue it, right.

4 THE COURT: Do you want to argue it now, or do you
5 want to file a supplemental brief? Because it doesn't matter
6 to me.

7 MR. CLARY: No. Let's argue now.

8 MR. SEGEL: Mr. Clary says argue now, Your Honor.

9 THE COURT: Okay. Come on, Mr. Segel, let's go.

10 MR. SEGEL: Well, it's their motion.

11 THE COURT: Well, yeah. You asked for documents,
12 they didn't give them to you, you're irritated.

13 Mr. Segel.

14 MR. SEGEL: Yes, Your Honor. Well, again, it's
15 Kokoweef. I don't represent Kokoweef, Your Honor. But
16 basically I don't think that the motion that -- and I wasn't
17 really prepared to argue, so Mr. Clary's going to argue. But
18 I didn't think that the motion set forth what it was we didn't
19 produce. As I set forth I think in our opposition, we've
20 given them probably two stacks this high, 12 inches or so, of
21 documentation.

22 The one thing we didn't give them and we're going to
23 fight over is a shareholders list. We don't think that it's
24 appropriate to give a shareholders list on this situation. If
25 they want to explain the benefit of why it's going to be of

1 value to them -- the problem that we've had is they've gone to
2 the Securities Division. We're now having to have
3 investigation by the Securities Division, which we think we'll
4 be successful in defending. But that's an expense of Kokoweef
5 that has to be borne that is not in the benefit of the
6 shareholders.

7 We're also subject to an IRS audit, which is not a
8 problem, because we're not concerned about it. But that's
9 also because of what they've been doing. They went to the
10 State Bar against Mr. Clary. They're doing everything they
11 can do -- the individual plaintiffs are doing everything they
12 could do to try to disrail and kill Kokoweef.

13 Our concern is that they are going to take the
14 shareholders list and contact each and every shareholder. And
15 because of the wonderful case of Thigg versus Oceans, which I
16 unfortunately know because Donna Thigg is the reason I live in
17 Las Vegas, and Dick Oceans's my first interview, you could do
18 anything you want to do. When a case is pending in court you
19 can say anything outside of court, almost, and it's not
20 slander, it's not libel. And so --

21 THE COURT: Well, there's this new CCSD case that
22 says that, too.

23 MR. SEGEL: It's -- the problem, Your Honor, is that
24 what they're doing, what they're saying about Mr. Hahn and
25 what we're doing is they're trying to influence the other

1 shareholders who have full faith in what Mr. Hahn has done
2 through the years, and they're trying to get to those
3 shareholders so that they can try to motivate them against Mr.
4 Hahn. And it's just creating more problems for Kokoweef.

5 So on the shareholder issue we don't think they've
6 shown a justifiable basis for having the shareholders list.
7 So we're fighting over them receiving that.

8 On the other documentation Mr. Clary and Ms. --
9 I'm sorry, I have a mental block.

10 MR. CLARY: Taylor.

11 MR. SEGEL: -- I'm sorry -- Ms. Taylor had a
12 telephone call, as I understand it -- I didn't participate,
13 that's why I shouldn't be arguing this part --

14 MR. CLARY: I'll argue.

15 MR. SEGEL: -- a long telephone conversation
16 December of 2009 where they discussed what would be produced,
17 what wouldn't be produced. And Ms. Taylor -- and this is
18 based on my conversation with Mr. Clary immediately following
19 that conversation --

20 MS. TAYLOR: Objection. Hearsay.

21 THE COURT: IT's an argument.

22 MS. TAYLOR: I'm sorry, Your Honor.

23 THE COURT: It was funny, though, Ms. Taylor.

24 MS. TAYLOR: Thank you, Your Honor.

25 MR. CLARY: I didn't hear what she said.

1 MR. SEGEL: She said, "Hearsay," and the Judge said,
2 this is oral argument.

3 THE COURT: She objected to the argument on hearsay,
4 and I laughed.

5 MR. CLARY: My hearing aids got found at the bottom
6 of the washing machine, so I'm in trouble today.

7 THE COURT: Do you want the cool headphones that we
8 have?

9 MR. CLARY: I'm beginning to think maybe I need
10 them.

11 (Off-record colloquy - Court and Marshal)

12 THE COURT: Hold on a second. Let's get Mr. Clary
13 the headphones.

14 MR. CLARY: When we have these side comments I like
15 to hear them. I might just say, Your Honor, on the issue that
16 Mr. Segel raised, to try to save some time, that we did have
17 that conversation. And her response to my point on that --

18 THE COURT: Hold on a second, Mr. Clary. Let's get
19 you the headphones first.

20 MR. CLARY: And my response to her -- and her
21 response to my affidavit in which I indicated that I had this
22 conversation with her, she doesn't deny that we had the
23 conversation. She just denies that she never communicated
24 with me again. She didn't communication with me, not -- but
25 not -- she never got back to me with the details that she said

1 she was going to set forth in the letter we'd agreed to.

2 THE COURT: Okay. Mr. Segel, you were arguing.

3 MR. SEGEL: Your Honor, the issue -- well, again, I
4 think I've basically -- Mr. Clary and Ms. Taylor had this
5 discussion of what was going to be produced. As Mr. Clary
6 just mentioned, Ms. Taylor theoretically was going to send a
7 letter memorializing what the agreement was, and then Mr.
8 Clary was going to go make sure he got those documents
9 together for her. That -- the letter never came. Mr. Clary
10 never did the work. And there's no new phone call, no new
11 attempt to resolve the issue, and the motion was filed. So
12 I'm sure 234 was satisfied.

13 The big issue that I've got, Your Honor, in being --
14 in saying they want documents and we're not -- okay, Mr.
15 Segel, now respond, is I don't know what they want. I mean,
16 they're saying -- you know, number one, Mr. Clary's position
17 was that -- they put this request for documents in the middle
18 of a notice of deposition. Mr. Clary's position is that
19 that's not proper. He never filed a formal response to the
20 request. So that's one of the issues they raise, as well,
21 there's never a response.

22 So we don't know -- you know, in a motion to compel
23 you're supposed to say, we asked for this and we didn't get
24 this, this, and this. I don't think they have that in their
25 motion. So we don't have the information to know what it is

1 that they claim we didn't produce.

2 There's one set of documents I know that I think we
3 need to supplement, and we're working on --

4 THE COURT: So you don't think that what is attached
5 as Exhibit 1 to their motion is the request for production?

6 MR. SEGEL: Well, let me just look at it, Your
7 Honor.

8 MR. CLARY: Your Honor, even though I objected
9 technically to the form of their request for production,
10 because they never gave one, the fact of the matter is that I
11 treated it as though it had been properly done, and we
12 produced all those documents. You know, I'd like to know what
13 documents we haven't produced. They've never told us. We've
14 asked them --

15 MR. SEGEL: Your Honor --

16 MR. CLARY: -- tell us what documents. And she was
17 going to write me a letter, and we had a procedure that we
18 were going to use. And, I mean, we spent, I don't know, an
19 hour or two on the telephone. And then I never heard from her
20 again, and then she files this motion. This is outrageous.

21 MR. SEGEL: Your Honor, in response to your
22 question, we have responded to most, if not all, of these
23 requests. My understanding of the rules for a motion to
24 compel is that the party that is moving to compel production
25 must list what the request was and what wasn't produced. Here

1 they just listed en banc their entire production. If the
2 Court wants me to go through here and tell you what we've
3 produced, I'll be glad to do that. But I'm telling you right
4 now --

5 THE COURT: Other than the shareholder list, what
6 else did you refuse to produce?

7 MR. SEGEL: The only thing we've -- I think we
8 refused to produce is the shareholders list. I may be wrong.
9 That's my recollection. We did not produce certain
10 documentation regarding loans. We're putting that information
11 together. And we hoped to get a report today. We're still
12 trying to get together. We've had issues -- the Hahns have
13 had issues that have prevented them from doing that in the
14 last few days. So otherwise we would have had that done
15 before.

16 But, you know, on the rest of the requests, with
17 those two -- we've given tax returns, we've given -- they
18 subpoenaed all our monthly statements. They subpoenaed a
19 court [unintelligible] where they subpoenaed the statements
20 not only for Kokoweef and EIN, but for the Hahns individually
21 and for Hahn's Surplus. And that was the protective order
22 that -- we stipulated even though they didn't properly
23 subpoena them, they didn't notice us, we didn't find out about
24 it until -- the 16.1 hadn't been held yet, the JCCR hadn't
25 been filed.

1 THE COURT: So have all the corporate documents and
2 minutes been produced?

3 MR. SEGEL: Yes, I believe they have, Your Honor.

4 THE COURT: Okay. And all of the accounting data
5 that's included in Request Number 16 been produced?

6 MR. SEGEL: Let me look at 16 before I respond, but
7 I believe the answer would be yes once I see it.

8 THE COURT: Well, it doesn't sound like from the
9 description of documents you told me were produced.

10 MR. SEGEL: Your Honor, we -- I'm fairly certain we
11 gave them the QuickBooks backup. I'm not positive.

12 THE COURT: They asked for data files in native
13 format.

14 MR. SEGEL: Well, Your Honor, here's -- one of the
15 issues in this case, Mr. Burke a few years ago said, hey,
16 look, all your stuff -- this place was run like a small
17 company. Mr. Hahn -- there were no really paid employees to
18 speak of in the office. Mr. Hahn ran the place. He used a
19 part of his back of Hahn's Surplus as the office for Kokoweef.
20 All he had, volunteers. So there were pieces of paper
21 everywhere. It was not computerized. Mr. Burke demanded --
22 he was a director at the time -- demanded that they
23 computerize everything. So Mr. Burke brought in Rita
24 Vandeworker -- Vandewalker, and Ms. Vandewalker took all
25 these pieces of paper and put them into QuickBooks. That's

1 the first time we had a computerized system. That's all we
2 have.

3 THE COURT: Okay.

4 MR. SEGEL: Prior to the litigation we turned over
5 all those records to them. There was like four or five
6 binders, 3-inch binders of records, checks, backup and
7 whatnot, was given to them prior to the litigation, because
8 they were going to do an audit. Which they never did. And
9 that was a subject of the evidentiary hearing. Mr. Springem
10 [phonetic], their expert, testified that he had reviewed all
11 those documents. That was the basis of his initial finding of
12 red herrings or --

13 THE COURT: So we've never produced it in the native
14 format?

15 MR. SEGEL: No. No, no. I'm not saying no. I'm
16 not sure what you mean by native format. I believe we've
17 given them a disk --

18 THE COURT: It's an electronic backup of QuickBooks
19 that you make, you give it to them, and then their accountant
20 looks at it, and then you guys don't fight so much.

21 MR. SEGEL: I believe -- well, Your Honor, in this
22 case we'll never stop fighting. But I believe we've given
23 them a QuickBooks disk. If we haven't, we have no problem
24 doing it. But I think we have.

25 THE COURT: Okay.

1 MR. CLARY: Sure we have.

2 MR. SEGEL: I'm pretty sure we have. We gave them
3 the backup, the hard copy, before the litigation, as well as
4 supplemental stuff as part of this production.

5 MR. CLARY: I've given them at least five or six
6 disks.

7 THE COURT: Mr. Clary, hold on. Mr. Segel's
8 arguing.

9 Mr. Segel, what else do you think you've refused to
10 produce?

11 MR. SEGEL: The only thing that we refused to
12 produce from my recollection is the shareholders list.

13 THE COURT: Okay.

14 MR. SEGEL: I believe that we didn't fully respond
15 to the loans, and we're supplementing that. We're also going
16 through all the requests to see if there's anything else that
17 we can do to supplement.

18 THE COURT: Okay. Now, Ms. Taylor or Mr. Robertson.

19 MS. TAYLOR: Your Honor, let me first say that all
20 of the side comments that Mr. Segel made about prior motions,
21 et cetera, are really interesting, but not relevant to my
22 motion, which is very straightforward. 30(b)(5) lets me file
23 requests for production along with a 30(b)(6) deposition
24 notice. That's what I did. Rule 34 says, if you want to
25 oppose what's in a request for production you have to do it in

1 the written form. It also says if you want to produce
2 documents you have to do it in the ordinary course of how
3 they're kept in business, and you have to note each category
4 that that document is going to fulfill. And somebody has to
5 sign it, and somebody has to say it's either authentic or
6 certify it in some manner, shape or form.

7 MR. CLARY: How does she say that?

8 MS. TAYLOR: And that has never been done to this
9 date. There's a lot of things that haven't been produced.
10 The September 17th telephone conference with Mr. Clary, it was
11 a two-hour call. Couple of things that were resolved was that
12 he was going to get me tax records that had not been produced
13 from like '04 or '06. He did that several days later. But
14 then they had this whole wash of documents from like the '04
15 to '06 time period, plus they had receipts that hadn't been
16 done. And that's set out in the deposition, that their
17 purported PMK had said, I'm still not done copying receipts, I
18 do it when I have time and when I'm asked. They've never
19 produced that.

20 And so Mr. Clary told me, oh, well, they're scanning
21 documents, they're working on it, we'll get it to you before
22 Christmas. And I said, great, if I don't see it by Christmas,
23 I'm going to have to do a motion to compel, because our
24 September 17th conference would intended to comply with 2.34,
25 even though they had never opposed in written form any of my

1 requests. Never saw it before Christmas. Called him on
2 January 4th, said, give me the status of the rest of the
3 documents you're going to give me. He said, I'll get back to
4 you. He never got back to me. I had to file this motion.

5 I think it's really clear what we haven't gotten. I
6 mean, I said, we don't have the '04, '05, any of the corporate
7 records, we don't have hard copies of a lot of the receipts,
8 we don't know for a fact that we have all the hard copies of
9 the checks, because we can't get a PMK. They produced
10 somebody who was basically their copy service. You know, she
11 would get documents from other people, copy them, and that's
12 what she gave us. I went through very specifically with her
13 every single request. She couldn't tell me whether documents
14 complied with that request, nor could she tell me where they'd
15 come from, where else we might need to look, and who else
16 might know about them.

17 So we don't have that type of certification, we
18 don't have the bulk of the receipts, we don't know what has or
19 hasn't been produced, because we can't get a legitimate
20 certification. Mr. Segel's saying, I think it's all been
21 produced, is one of the problems that we've been having. And
22 that's why I did the depo notice with the RTPs the way I did
23 it.

24 We don't have stock certificates, we don't have a
25 ledger that would show consideration for the shares sold and

1 what the prices were, and until we see a written response and
2 a verification of what's been produced, which request they
3 think it complies with, and a certification from either a PMK
4 or their counsel that that's the totality of the records,
5 we're really in a bind, because we have to keep playing this
6 game with them of -- you know, I just hear for the first time
7 from Nelson, oh, they're still working on it. Now, that
8 totally belies what Mr. Clary said in his opposition, which
9 was, oh, we gave them everything. And so I have to do this
10 dance constantly to try to get records.

11 You know, it's -- there's so many things -- I don't
12 want to get into a he said-she said. The bottom line is they
13 haven't given us records. My deposition notice was proper.
14 They've never given me a legitimate basis to say that, not
15 putting a title on, not attaching it via staple versus
16 building it into the body is inappropriate under 30(b)(5), and
17 it's just really simple. We're requesting you make them
18 certify, you make them delineate under my requests, and you
19 make them produce within a certain time frame so we can get
20 rolling on this.

21 THE COURT: Okay. Anything else, Mr. Segel?

22 MR. SEGEL: Your Honor, I'm not sure the issue of
23 whether or not putting the notice -- the request inside the
24 notice of deposition is appropriate or not.

25 THE COURT: It is.

1 MR. SEGEL: If what they're requesting --
2 THE COURT: It's been for like 15 years.
3 MR. SEGEL: If they're -- oh. I don't --
4 THE COURT: You don't come over here too often.
5 MR. SEGEL: I'll go back to Bankruptcy and play with
6 them back there.

7 If the -- if what they're asking, Your Honor, is
8 that we give a formal response and Mr. Clary sign that formal
9 response --

10 THE COURT: Well, somebody has to sign it.

11 MR. SEGEL: Well, Mr. Clary represents Kokoweef. I
12 can't do it. The requests were to Kokoweef

13 -- then I don't think we have a problem giving that
14 response. And to the extent that we have anything to
15 supplement, we'll supplement. This idea of a certification,
16 I've never heard that we have any obligation to put a specific
17 certification. We have a request, we responded, we're stuck
18 with what we respond to as that's true or not.

19 The ledger -- again, the ledger, until they show the
20 Court why the ledger for the shares or the shares are
21 meaningful in this case, I don't think they should be
22 provided. I don't think there's a justification. I mean,
23 this is something I think that we've raised a sufficient issue
24 on.

25 Mr. Clary has stated to me, and he can up, if you

1 want him to, that he never got a phone call on January 4th,
2 that he never agreed to a December -- before Christmas
3 production, that wasn't the arrangement. But, you know, we
4 have what we have. If the issue with this Court, again, is we
5 give them a response, we give the response. But we believe --
6 with the exception of what I've told you, I believe we've
7 produced everything that we have in our possession. We are
8 continuing to try to go through the records. Again, it's all
9 volunteers. I don't have anybody being paid to do this work.
10 We have volunteers that are doing it. I have not been
11 involved. It sounds like I'm going to have to go over myself
12 and supervise this. I will do that if that satisfies the
13 Court. But Mr. Clary is counsel for Kokoweef. I'll be there
14 as Mr. Hahn, the president's attorney, protecting his
15 interests to make sure everything has been completed. Mr.
16 Clary will sign the response for them, if that's what they
17 need.

18 MS. TAYLOR: Your Honor, if can just -- I'm sorry.
19 Just two --

20 THE COURT: No. It's okay. I'm ready.

21 All right. I need a written response to the request
22 for production which was properly served within 15 days. It
23 needs to be signed by one of the counsel. It doesn't have to
24 be certified, it just needs to be signed with the written
25 responses delineating the documents that are produced in

1 conjunction with that.

2 With respect to the shareholder lists, it's one of
3 the requests. It needs to be produced. I understand you may
4 want some limitation as to the way that is used or disclosed,
5 and I'm happy to discuss with you a limitation on that use.

6 The PMK needs to be produced again after the
7 documents are provided, because the PMK was supposed to bring
8 all the documents with him to the deposition, which is why the
9 notice is served in the fashion it is, within 30 days.

10 As to the documents regarding loans, you say that
11 you're in the process of supplementing that, so you can
12 provide it with the written response.

13 And the QuickBooks electronic data file needs to be
14 produced as part of this.

15 MR. SEGEL: If it hasn't, we'll produce it.

16 MR. CLARY: Your Honor, we had produced five disks
17 for them. I mean --

18 MR. SEGEL: Your Honor, just one clarification. I
19 think we need to address this now. The limitation on the
20 shares. My position would be that if you're requiring us to
21 produced the information from the shareholders list and the
22 ledgers that they be in counsel's possession only and they're
23 not disclosed to the plaintiff at all. If there's a basis for
24 doing so, they can come back to court and --

25 THE COURT: That's right. That's how I usually do

1 it.

2 MS. TAYLOR: And, Your Honor, I would just like to
3 be able to produce them to my expert.

4 MR. SEGEL: [Unintelligible].

5 THE COURT: Okay.

6 MR. ROBERTSON: So stipulated.

7 MS. TAYLOR: Thank you, Your Honor.

8 THE COURT: That'll be the stipulation on the
9 restriction of the shareholders list.

10 MS. TAYLOR: Okay.

11 THE COURT: If you need to use it or have the basis
12 that you feel you need to communicate to any of the
13 shareholders, you have to come back and seek permission from
14 the Court, in which way we will come back with a protocol for
15 you to contact the shareholders in a way that both sides feel
16 that they're adequately informed.

17 MR. SEGEL: May we redact their personal information
18 or --

19 THE COURT: Can we take their Socials off.

20 MR. SEGEL: Well, the addresses and phone numbers,
21 as well, is what I'm asking.

22 MS. TAYLOR: No. Your Honor --

23 THE COURT: The Social Security numbers, yes. As to
24 the addresses, no.

25 But you're not to contact them, and your expert's

1 not to contact them.

2 MS. TAYLOR: That is fine, Your Honor.

3 MR. ROBERTSON: And, Your Honor, I just want to get
4 a clarification on the protective order. It's essential that
5 I be able to consult with my clients, who are shareholders in
6 that list, because the discrepancy is how many shares they own
7 between the plaintiffs and the corporation.

8 THE COURT: Here's the deal. You look at it, you
9 digest it, you can talk to your clients about it. You can't
10 show it to your clients, and you can't talk to any of the
11 shareholders --

12 MR. ROBERTSON: That's fine. I don't have --

13 THE COURT: -- except your clients.

14 MR. SEGEL: And they not disclose who a shareholder
15 is other than that individual shareholder.

16 THE COURT: He's the lawyer. He's going to digest
17 it. He will find out who the shareholders are. If he wants
18 to talk to his client about who a shareholder is, he can talk
19 to his client about that. But neither he nor his client or
20 his expert will contact the shareholders. He cannot show the
21 documents to his client.

22 MR. SEGEL: Your Honor, my concern is that, again,
23 Mr. Burke, who we've set forth -- as an aside, we're not
24 addressing that issue today -- is not really a shareholder,
25 because he holds his shares in an LLC. But Mr. Burke has --

1 you know, we've alleged in our pleadings throughout that Mr.
2 Burke's intent is to destroy Kokoweef. I have evidence of
3 their desires to get rid of Kokoweef and merge it with the
4 lesser of the mine. We have serious concerns, legitimate
5 concerns that any disclosure of any of the names of the
6 shareholders will somehow miraculously be disclosed. I would
7 ask at this point that the Court order that no disclosure of
8 any shareholders other than -- if they want to talk to Mr.
9 Burke about the number of shares we show that he has, I have
10 no problem with that, or show to Mr. Kehoe the shares that he
11 has, I have no issue with that. But disclosing any
12 information about any shareholder other than the specific
13 shareholder who they're discussing with I think at this stage
14 should be held in abeyance, should be restricted. If they
15 have an issue with that, I'll talk to Mr. Robertson or Ms.
16 Taylor. If we can reach an agreement, we do. Otherwise, come
17 back before Your Honor. There's serious issues here.

18 MR. CLARY: Your Honor, if I could --

19 THE COURT: Wait. Can I just say something, please.

20 My typical activity on what this is is an attorney
21 eyes only with a limited restriction. So you get one
22 corporate representative, you get one expert. The information
23 cannot be disclosed any further than that. In this case I am
24 restricting it. I'm not allowing them to show the information
25 to the one corporate representative. It is attorneys' eyes,

1 experts. Those are the only two. It will not be disclosed
2 further.

3 However, the information that is being reviewed in
4 order for counsel to properly handle the case, they have to be
5 able to go through the information, digest it, and then
6 discuss it with their clients.

7 So to the extent that they need to discuss with
8 their client who the other shareholders are, they will be
9 permitted to do so.

10 MR. SEGEL: All right. And so, Your Honor, you're
11 giving us 30 days to produce that; correct?

12 THE COURT: No. I gave you 20 days.

13 MR. SEGEL: Twenty days? I'm sorry.

14 MS. TAYLOR: Your Honor, I thought it was 15 days.

15 THE COURT: I'm sorry. Fifteen days. Fifteen. And
16 30 days to produce the PMK. Sorry.

17 MR. CLARY: Your Honor, there's one fact you need to
18 be made aware of. Mr. Segel gave you some background on
19 what's happened -- what's really happening in the case and how
20 we view the case. But you need to be aware of the fact that
21 Mr. Burke over here sends out these outrageous newsletters to
22 whatever shareholders' names he can get a hold of. And that
23 is the ultimate fear that we have.

24 THE COURT: If I find out that Mr. Burke sent a
25 newsletter to any new shareholders that he hasn't previously

1 sent the newsletter to after this information is shown to Alex
2 Robertson or Jennifer Taylor, then we might have a problem and
3 I might put somebody in jail if I find them in contempt of my
4 order.

5 MR. CLARY: Thank you very much.

6 MR. SEGEL: Your Honor, would the Court entertain a
7 motion on shortened time to have Mr. Burke disqualified as a
8 plaintiff in this case?

9 THE COURT: You may certainly file such a motion.

10 MR. SEGEL: Thank you, Your Honor.

11 THE COURT: And I, you know, will then set it, and
12 we'll figure out when to have it, and I'll look at my calendar
13 and see when I can give you.

14 MR. SEGEL: I appreciate that.

15 THE COURT: Okay. If there are any concerns
16 regarding the protective order that we've just talked about,
17 if you have trouble in reaching an agreement as to the
18 specific language, please email both versions to me by Tuesday
19 of next week so that Katie and I can then fashion the language
20 that I intended to communicate to you today if you don't agree
21 with what -- if you didn't both get the same version of what I
22 said.

23 MR. SEGEL: Has that ever happened, Your Honor?

24 THE COURT: Never.

25 MR. SEGEL: Thank you.

1 MR. ROBERTSON: Plaintiffs understand perfectly.

2 THE COURT: So the motions for summary judgment are
3 off calendar, to be renoticed after the completion of the
4 30(b)(6) deposition. So if you want to have them renoticed,
5 then you'll just refile it with a notice, attach it, and then
6 we'll have a supplemental opposition that'll include the
7 information from the 30(b)(6) depo.

8 MR. CLARY: Now, how do we determine who's going to
9 be -- appear? We in good -- I can tell you in good faith
10 based upon my interview of my clients and their employees or
11 their help, their unpaid employees, as to who is the most
12 informed person on the documents that they had requested. And
13 they contend that that wasn't the right person. Now, how am I
14 supposed to -- how are we ever going to have that deposition?
15 Because they're going to come back and say, they still didn't
16 designate the right person, they didn't designate the right
17 person.

18 THE COURT: Here's the deal, Mr. Clary.

19 MR. CLARY: How do we resolve that?

20 THE COURT: Under Rule 30 you are required to -- you
21 or your client are required to find a person or make a person
22 the most knowledgeable person with respect to the categories
23 that have been delineated in the notice of deposition.

24 MR. CLARY: So if we have to produce 15 people, we
25 produce 15 people?

1 THE COURT: That's how it usually works. And then
2 as each one is there they tell which area they have been
3 designated as the PMK for, and then the deposition goes
4 forward. That can be a cumbersome process, but it is the
5 process that Rule 30(b)(6) is designed to insure, because this
6 individual is the one who is binding the corporation. So
7 you're the one who gets to pick, and then the corporation gets
8 -- or the entity gets bound by it. So --

9 MR. SEGEL: Your Honor, could I -- you want to
10 continue the motion for summary judgment. And I appreciate
11 that. But my concern is that I think we've asked for three
12 different partial summary judgments. We asked for one on the
13 negligent misrepresentation --

14 THE COURT: I saw that.

15 MR. SEGEL: -- and --

16 THE COURT: I read them all.

17 MR. SEGEL: I'm sure you did. I'm sure you --

18 THE COURT: I even read the motions first before I
19 read the motion to compel. And I realized, gosh, I should
20 have read the motion to compel first.

21 MR. SEGEL: If I could have told you, I would have.
22 But I couldn't do that.

23 THE COURT: Yeah.

24 MR. SEGEL: The other is -- and that's against Mr.
25 Hahn individually, and then Mr. Clary has the same motion.

1 The second motion for summary judgment -- or partial
2 summary judgment is against Hahn Surplus as to unjust
3 enrichment.

4 And then the third is where we're asking this Court
5 to determine that this is not a derivative action based upon
6 the fact that the plaintiffs are seeking -- you've read it.

7 THE COURT: Yeah. They're saying arguably both
8 derivative and direct. And I'm not really clear on which it
9 is at this point.

10 MR. SEGEL: Well, me -- and my concern -- we could
11 use some direction, Your Honor. And I don't know if you're
12 prepared to address any portion of these. But the issue of
13 whether this is derivative or not I think has nothing to do
14 with what was produced or not produced. The issue of Hahn
15 Surplus, the record reflects that they received all of this
16 documentation. There's nothing in the requests that would
17 have given them any more information or any further ability to
18 defend this case today.

19 And the third issue, the motion for summary judgment
20 on the negligent representation I also don't think that --

21 THE COURT: Well, you're going to lose that one on
22 negligent misrepresentation. I thought they pled it
23 adequately. And since discovery is not completed, I was going
24 to deny it without prejudice for you to renew it following the
25 depositions. But instead I said we'd just continue it to

1 follow it.

2 MR. SEGEL: I guess we're continuing, then. All
3 right.

4 THE COURT: So here's the other deal. The issue on
5 the derivative versus direct action, I think your request to
6 disqualify the particular representative plaintiff is a more
7 effective way of handling that issue. And you made that
8 request and asked if I would sign an OST, and I said I would.
9 Because in reading this I am unable to say it's not a
10 derivative action; however, it does appear to me that there
11 may be issues with who the representative is. How's that?

12 MR. SEGEL: Well, the issue, Your Honor, is that all
13 of the plaintiffs as they sit here today are asking for relief
14 on their own. And then we also have this issue that seems to
15 be -- I don't know how we litigate it, but a prayer that says,
16 plaintiffs request reflect from defendants is
17 [unintelligible], and they ask for damages. There's nothing
18 as in the original complaint where they seek damages on behalf
19 of Kokoweef. And so my recollection of basic pleading was
20 that if you don't pray for it, you don't get it. And if it's
21 not in the prayer, how can this be a derivative action, how
22 can people that are seeking damages for themselves be
23 representatives of the -- all the shareholders when they're
24 seeking to get damages for their own benefit? And that's my
25 issue. I don't know how to address that.

1 THE COURT: I understand exactly what your issue is.
2 The issue is does the money go back to the corporation when we
3 have new people in charge of the corporation, or does the
4 money go back to the claimants who are making a direct action
5 that they lost -- had damages. I am unclear, after reading
6 the briefing, which this is. It appears to be a mixed group
7 of derivative and direct claims at this point, and I would
8 anticipate that at some time after the 30(b)(6) deposition is
9 completed that there will be a narrowing and tailoring of
10 those issues, because they have to make an election as to
11 whether they are going to pursue the claims on the derivative
12 basis or the direct basis. Because the same claim may be
13 both. The question is do the proceeds then go back to the
14 entity from a derivative standpoint, or do they go back to the
15 individuals as a direct standpoint. And if I've got to
16 disqualify someone as a representative because they've been
17 bad, then that's a whole complicating factor.

18 MR. CLARY: Well, the thing that bothers me, Your
19 Honor, is that it's not just the prayer. If you read this
20 huge -- how many pages amended complaint, the actual language
21 of the complaint itself, even if you didn't have the prayer,
22 doesn't state a claim against -- that's a derivative claim.

23 THE COURT: I understand your position, Mr. Clary.
24 So, Mr. Segel, it's your choice on whether I give
25 you a date now that's about 30 days after I anticipate the

1 30(b)(6) being completed, or if you want to just renotice it
2 after the completion of that and attach your motion. Because
3 I don't know that your motion's going to change. You may want
4 to supplement it with what happens between now and then. It's
5 up to you.

6 MR. SEGEL: Okay.

7 THE COURT: But my intention is not to have it heard
8 until I can get the briefing related to that motion.

9 MS. TAYLOR: Your Honor --

10 THE COURT: Hold on. I'm talking to Mr. Segel.

11 MR. SEGEL: Your Honor, I would --

12 MR. CLARY: Hold on a minute.

13 MR. SEGEL: Mr. Clary wants me to just renotice it.
14 I'll just do my best and not get my foreclosure mediation
15 scheduled so I can be here.

16 But I do have one issue we need to address, as well,
17 about the pleading. And the issue is these late surreplies.

18 THE COURT: I didn't read it.

19 MR. SEGEL: I appreciate that. But I --

20 THE COURT: It was too late.

21 MR. SEGEL: But could we please have an order from
22 this Court that we follow the rules unless you get a Court
23 order to do otherwise?

24 THE COURT: Well, here's the deal. If I don't get
25 it in time, I don't read it. So it's better than the rule.

1 MR. SEGEL: All right. I got that. Thank you. I'm
2 slow, but I learn.

3 MR. CLARY: Well, the reply in support of this
4 motion we're arguing right now wasn't on time.

5 THE COURT: Well, there's this flexible -- when the
6 Supreme Court changed the service rules, they didn't change
7 the when notices of motion -- when notices of motions are set,
8 so there is inherently a conflict that I'm currently trying to
9 fix with the new rules that have been discussed at the last
10 two civil judges meetings where Mr. Segel was lucky enough to
11 attend. So we're trying to fix that. But there is by
12 necessity of the change that was made two years ago and the
13 lack of change by the Eighth Judicial District Court, a
14 conflict of when reply briefs get filed. And I recognize
15 that, and I'm really trying real hard from an administrative
16 perspective to fix it, but I haven't got it done yet.

17 MR. CLARY: Well, we wish you luck on doing so.

18 THE COURT: Yeah. And once I get it done, then it
19 takes six months for the Supreme Court to approve it.

20 MR. SEGEL: Thank you, Your Honor.

21 THE COURT: Welcome to my world of administration.
22 Anything else on this case today?

23 MR. SEGEL: Ms. Taylor had a comment.

24 THE COURT: Ms. Taylor.

25 MR. CLARY: Long as I don't have to attend any more

1 meetings, that's good.

2 MS. TAYLOR: Your Honor, part of my motion to compel
3 asked for an extension.

4 THE COURT: I know. I'm not moving the dates yet.

5 MS. TAYLOR: Will I be able to --

6 THE COURT: You're going to be able to ask me to
7 move the expert dates after you get the documents in 15 days,
8 and then you're going to tell me, Judge, I got the documents,
9 I still need to do Z, Y, and Z, I looked at your schedule, the
10 schedule looks good to me, so if you and Mr. Segel and Mr.
11 Clary are able to stipulate this kind of looks good to me, but
12 I wanted to make sure you got the documents, because I thought
13 the schedule might be too aggressive, depending on what
14 documents you've got.

15 MS. TAYLOR: Okay. Thank you, Your Honor.

16 MR. SEGEL: Your Honor, I think once we have the --
17 you hear the summary judgment motion, we may or may not be
18 willing to an extension of time. Thank you.

19 THE COURT: I'm not really worried about it. It's
20 going to get extended one way or the other if the documents
21 are too voluminous or -- yeah.

22 MR. SEGEL: I appreciate it. I think we're pretty --

23 THE COURT: Okay.

24 MR. SEGEL: Thank you, Your Honor.

25 THE PROCEEDINGS CONCLUDED AT 9:43 A.M.

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146

Florence M. Hoyt
FLORENCE HOYT, TRANSCRIBER

3/31/10
DATE