



1 IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

2 IN RE SHARES OF COMMON STOCK :  
3 OF THE COCA-COLA COMPANY, :  
4 THE COCA-COLA COMPANY, a :  
5 Delaware Corporation, :  
6 Plaintiff and :  
7 Counterclaim Defendant, :

8 vs. : Civil Action  
9 : No. 5156-CS

10 SCOTT HARLOW, :  
11 Defendant and :  
12 Cross-claim Defendant, :  
13 and :  
14 THE ESTATE OF TONY MAROHN, :  
15 Defendant, Counterclaim and :  
16 Cross-Claim Plaintiff :

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18 Chancery Courtroom No. 12A  
19 New Castle County Courthouse  
20 Wilmington, Delaware  
21 Tuesday, January 31, 2012  
22 10:00 a.m.

23 BEFORE: HON. LEO E. STRINE, JR., CHANCELLOR

24 - - -  
MOTION FOR DEFAULT JUDGMENT

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25 CHANCERY COURT REPORTERS  
26 500 North King Street - Suite 11400  
27 Wilmington, Delaware 19801-3759  
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1 APPEARANCES:

2 S. MARK HURD, ESQ.  
3 SHANNON E. GERMAN, ESQ.  
4 Morris, Nichols, Arsht & Tunnell LLP  
5 -and-  
6 JEFFREY S. CASHDAN, ESQ.  
7 of the Georgia Bar  
8 King & Spalding LLP  
9 For Plaintiff the Coca-Cola Company  
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1 THE COURT: Good morning, Mr. Hurd.

2 MR. HURD: Good morning, Your Honor.

3 I rise simply to introduce Jeff Cashdan, my co-counsel  
4 from King & Spalding, co-counsel with me on behalf of  
5 The Coca-Cola Company.

6 THE COURT: Good morning.

7 MR. CASHDAN: Good morning.

8 MR. FRIEDLANDER: Good morning, Your  
9 Honor. Joel Friedlander for the estate of  
10 Tony Marohn. I would like to introduce to the Court  
11 our associate Jamie Brown.

12 THE COURT: Good morning, Miss Brown.

13 MR. FRIEDLANDER: We're here on a  
14 motion for default judgment. Just briefly, on the  
15 background of the situation, this case concerns the  
16 validity of a stock certificate. I would be happy to  
17 provide copies to Your Honor, if you would like to see  
18 it. And actually it probably would be easier just  
19 to -- and these are copies. But the Coca-Cola Company  
20 filed a motion -- an action for declaratory judgment.  
21 Mr. Harlow answered and claimed an interest. And what  
22 he claims is, if you see the second page of this  
23 detached assignment, that written in it says  
24 "...assign and transfer unto Tony Marohn and

1 Scott Harlow...." And Mr. Harlow pled that, on the  
2 instruction of Mr. Marohn, he physically wrote both  
3 their names in the blank space so this would no longer  
4 be a bearer certificate and they would be -- they  
5 would have those 1,625 shares. Mr. Harlow pled that  
6 he and Mr. Marohn became the holders in due course, as  
7 a consequence of that signature or that writing in of  
8 the names. So that was in April of 2010. The action  
9 was effectively stayed when Mr. Marohn died and a  
10 there was a whole dispute about control of the estate  
11 and who would represent the estate.

12 We appeared for the estate in June of  
13 2011. In July of 2011 there was a stipulation order  
14 regarding case scheduling that was entered -- it was  
15 entered on July 5th, 2011, which required Mr. Harlow  
16 and the estate to respond to certain discovery on or  
17 about July 29th. I think it's fair to say that, since  
18 that stipulation, that's really the last we heard of  
19 Mr. Harlow.

20 THE COURT: So you had no oral contact  
21 from him either?

22 MR. FRIEDLANDER: No. And all our  
23 e-mail -- we actually received e-mails from him --  
24 proceeded that. In June he basically signed off on

1 the stipulation and order. So it was signed on his  
2 behalf. But we haven't heard from him since. It's  
3 probably not a coincidence that at roughly the same  
4 time the estate filed a petition in the California  
5 probate court seeking to extinguish Mr. Harlow's  
6 interest for noncompliance with professional conduct  
7 rules in California but not having a writing with  
8 Mr. Marohn saying he should get his own counsel --

9 THE COURT: He's an attorney?

10 MR. FRIEDLANDER: Yes. So entering  
11 into business dealings with a client.

12 THE COURT: And I take it one of the  
13 issues is going to be whether this "and Scott Harlow"  
14 was written in later?

15 MR. FRIEDLANDER: No. I don't think  
16 there's really any dispute that it was written in at  
17 the same time. The question is by -- I think  
18 Mr. Harlow's proposition -- when he appeared, he only  
19 appeared for himself. I think he considered this some  
20 sort of business arrangement whereby he and  
21 Mr. Marohn --

22 THE COURT: Right. As opposed to him  
23 essentially just being on there as -- in his role as a  
24 fiduciary for Mr. Marohn.

1 MR. FRIEDLANDER: So Mr. Harlow is  
2 taking the position, or did take the position in this  
3 action that he has an independent interest in the  
4 shares.

5 THE COURT: So that he was a co-equal  
6 economic beneficiary?

7 MR. FRIEDLANDER: Yes. That's where  
8 you run into all these problems with the California  
9 rules of professional conduct by entering into  
10 business propositions with clients without a writing  
11 and without --

12 THE COURT: Now, Palmer Union Oil  
13 Company, that's some sort of predecessor to Coca-Cola?

14 MR. FRIEDLANDER: Yes, by numerous  
15 corporate transactions along the way, which Your Honor  
16 will hear about in due course.

17 THE COURT: In the history of Coke?

18 MR. FRIEDLANDER: I guess there's a  
19 Taylor Wine Company that Coca-Cola acquired a few  
20 years ago -- maybe in 1977. By a whole chain of  
21 corporate transactions it would be alleged that Coke  
22 is the successor to these shares. I think it's  
23 actually about 1.8 million shares of Coca-Cola this  
24 would translate into.

1 THE COURT: 1.8 million?

2 MR. FRIEDLANDER: Yes.

3 THE COURT: And what's Coca-Cola  
4 trading at these days?

5 MR. FRIEDLANDER: It was 67 on Friday.

6 THE COURT: This is a new version of  
7 the Beverly Hillbillies.

8 MR. FRIEDLANDER: Now, I think we  
9 learned in the probate action it would take about a  
10 year to resolve -- I guess they don't move very  
11 quickly there -- to resolve that interest. So that  
12 the proceeding against Mr. Harlow was dismissed  
13 without prejudice, and instead there was filed on  
14 October 11th, 2011 an amended answer to the complaint  
15 and a counterclaim and a crossclaim against Mr. Harlow  
16 in which we alleged that Mr. Harlow maintains that he  
17 would receive 50 percent of the proceeds from the  
18 certificate, but no such agreement was ever written  
19 down or memorialized. Mr. Marohn did not consult with  
20 independent counsel. And that any such arrangement --  
21 50-50 arrangement -- was void and unenforceable under  
22 California law. So that was filed on October 11th.  
23 It was served -- I believe the next day it was served  
24 by Federal Express and e-mail.

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1                   And then, when Mr. Harlow didn't  
2 respond to the crossclaim, the estate moved for  
3 default judgment against Mr. Harlow, and that was on  
4 November 8th. And that also was served by Federal  
5 Express and by e-mail.

6                   And then I guess, to tie up any loose  
7 ends, there might be -- on January 18th we filed an  
8 affidavit of Jamie Brown, which is really the  
9 equivalent of an affidavit of mailing attaching as  
10 Exhibit A a letter addressed to Mr. Harlow on  
11 January 12th, which was delivered by e-mail and FedEx,  
12 providing sort of the history of various e-mails  
13 notifying Mr. Harlow about the date and time of this  
14 hearing.

15                   THE COURT: Just -- and he's gotten  
16 notice and you haven't heard anything from him?

17                   MR. FRIEDLANDER: Right. We haven't  
18 heard anything from him.

19                   THE COURT: Just out of curiosity.  
20 How old is Mr. Harlow?

21                   MR. FRIEDLANDER: I don't know. I  
22 don't think he's terribly old or terribly young.

23                   THE COURT: How old is Mr. Marohn?

24                   MR. FRIEDLANDER: Mr. Marohn died.



1 THE COURT: How old was Mr. Marohn  
2 when he died?

3 MR. FRIEDLANDER: I don't know, Your  
4 Honor.

5 THE COURT: What the heck is this  
6 document that they signed?

7 MR. FRIEDLANDER: What it is? The  
8 document itself? This is --

9 THE COURT: It was signed before Ruth  
10 hit 60. It was signed before Ruth hit 60. I refer to  
11 Babe Ruth who was sixty in 1927. This was signed a  
12 couple years before that.

13 MR. FRIEDLANDER: Correct. Right.

14 So what this says, stock certificate  
15 to Stanley Wagner, and then this detached assignment  
16 and power of attorney signed by John Wagner in 1924.

17 THE COURT: So that it -- was  
18 John Wagner Nostradamus?

19 MR. FRIEDLANDER: No. Probably not.  
20 But I believe he was the son of Steve Wagner -- or  
21 Stanley Wagner -- I'm sorry -- and that this document  
22 could have been -- it essentially was a a bearer  
23 certificate, like a bearer bond in the 1920s.

24 THE COURT: What did they do? --find

1 this in an attic?

2 MR. FRIEDLANDER: It was purchased at  
3 an estate sale.

4 THE COURT: Purchased at an estate  
5 sale. When?

6 MR. FRIEDLANDER: A few years ago.  
7 I'm not sure --

8 THE COURT: As to what? Like a  
9 novelty item?

10 MR. FRIEDLANDER: With papers -- with  
11 various papers.

12 THE COURT: And so this guy  
13 John Wagner never signed this document onto  
14 Tony Marohn and Scott Harlow. They just bought this  
15 blank piece of paper?

16 MR. FRIEDLANDER: They bought it in  
17 blank -- right -- signed by John Wagner. Correct.

18 THE COURT: We don't know. Did they  
19 ever meet John Wagner?

20 MR. FRIEDLANDER: I don't think so  
21 because I think it was an estate -- a relative of  
22 John Wagner. I believe it was purchased at an estate  
23 sale.

24 THE COURT: Okay. And this is -- how

1 many companies away from Coke was this?

2 MR. FRIEDLANDER: About half a dozen  
3 or so.

4 THE COURT: Which means there were  
5 eight or nine merger agreements where people had to  
6 certify the capitalization of the company probably?

7 MR. FRIEDLANDER: I don't know. I  
8 mean, I don't know the precise mechanics.

9 THE COURT: One of the things that you  
10 typically don't allow any qualification of is the  
11 portion of a definitive acquisition agreement dealing  
12 with the capital structure of the firm you were going  
13 to acquire, for the reason that you absolutely need to  
14 know what you're paying for. I'm just trying to get a  
15 theory. The theory is we're going to parse through  
16 eight or nine mergers and you're going to discover  
17 that the present Coca-Cola Corporation and its  
18 stockholders should suffer dilution to the tune of  
19 70-some million dollars because somebody bought an old  
20 stock certificate at an estate sale for -- what did  
21 they purchase it for?

22 MR. FRIEDLANDER: I don't know, Your  
23 Honor.

24 THE COURT: Hundreds? Tens, fives?

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1 Something they could put in a frame to give a little  
2 character to a particular room. Then they inserted  
3 their name on a document that was supposedly signed in  
4 1924? Fresh -- the country celebrating freshly the  
5 election of Calvin Coolidge -- right? --who would have  
6 taken over after the death of Warren Harding, but  
7 elected to a term in his own right? Do I have my  
8 history correct?

9 MR. FRIEDLANDER: I don't remember the  
10 year Warren Harding died.

11 THE COURT: I thought Warren Harding  
12 died in his first term in office?

13 MR. CASHDAN: I believe that's right.

14 THE COURT: And then Calvin Coolidge  
15 assumed the presidency, and I believe won a term in  
16 his own right, serving until 1928, when Herbert Hoover  
17 defeated Al Smith, the days of the flappers, and then  
18 some things started going downhill shortly after  
19 Herbert Hoover took office.

20 I'm going to grant your motion for  
21 summary judgment -- I mean, not summary judgment --  
22 for default judgment. If you give a notice --  
23 Mr. Harlow has had -- I was going to say -- I will say  
24 in the future -- honestly, the Court should not have

1 to prompt the filing of the affidavit. Whenever you  
2 give -- whenever there's a default judgment, honestly  
3 you should document it and belts and suspenders out  
4 the wazoo. And there should be proof of that, just  
5 because of the nature of it. But there's been -- I'm  
6 convinced there's been plenty of notice. I'm  
7 convinced that the circumstances justify the entry of  
8 the order. So if you have the order, I would  
9 appreciate it.

10 MR. FRIEDLANDER: I just learned this  
11 morning that Coca-Cola had some -- they didn't like  
12 the type font. They're missing capital T in The Coke  
13 Company.

14 THE COURT: Precise, persnickety. One  
15 of the things they're going to point out to you during  
16 the case, I think.

17 MR. FRIEDLANDER: One thing I wanted  
18 to alert the Court to, one of the provisions in the  
19 order when we sought relief was to have -- Mr. Harlow  
20 processes the original certificate -- was to have him  
21 deliver it to counsel for the estate. And they're  
22 only a few miles away from each other. We have  
23 counsel out in California. I wanted to alert the  
24 Court that's one of the provisions we're seeking.

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1 THE COURT: Do you have a copy?

2 MR. FRIEDLANDER: I do. Unfortunately  
3 it has the missing capital T.

4 THE COURT: No. Then why don't you  
5 send over, by the miracle of LexisNexis -- it is a  
6 miracle -- and send over the copy that's been edited  
7 by your friends on the defense side and we will get  
8 that entered today.

9 MR. FRIEDLANDER: Thank you, Your  
10 Honor.

11 THE COURT: I think you would be wise  
12 to file -- I'm going to direct on the record that you  
13 serve the order upon Mr. Harlow and that you provide  
14 proof of service. So put that in the record. Do that  
15 within a week so that the record that it's been served  
16 upon him -- you know, in these situations folks often  
17 have an interest in saying they didn't get notice. I  
18 think, in the longer term, where is -- what is the  
19 next stage of this litigation?

20 MR. FRIEDLANDER: Yes, Your Honor.  
21 We've been in consultation with our friends, The  
22 Coca-Cola Company, about a scheduling order. We have  
23 served discovery. And we're just trying, I guess, to  
24 work out some details on a schedule. The idea would

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1 be to have summary judgment briefing completed within  
2 a year certainly.

3 THE COURT: Within a year?

4 MR. FRIEDLANDER: Well, one question  
5 we have is, we don't know how long fact discovery will  
6 take in terms of what documentation Coca-Cola Company  
7 will have, and therefore what kind of followup is  
8 needed. We wanted to have fact discovery going out to  
9 the summer, just --

10 THE COURT: Look, the American dream  
11 is a wonderful and diverse thing. In terms of  
12 discovery, it seems to me that it's incumbent on you  
13 and your excellent colleagues at your firm to have a  
14 bona fide claim that is based on an examination of the  
15 chain of events. And I'm a little skeptical -- I'll  
16 be honest -- that the defendants should be put through  
17 a 100 year history lesson based on this kind of thing.

18 I mean, your client is going to have  
19 no light to shed on any reliance of anybody in the  
20 chain of this stock certificate because there  
21 apparently was none. It was in an attic; right? It  
22 was somewhere. It got sold at an estate sale. Tell  
23 me this is worth 70-some million dollars or even more;  
24 right? 1.8 million?

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1 MR. FRIEDLANDER: Right.

2 THE COURT: So it's almost 150 million  
3 bucks? This is a court of equity. Stuff happens.  
4 When people sit on their rights -- for example, it's  
5 not clear to me that the people of Delaware wouldn't  
6 have a prior claim to your clients. Do you understand  
7 why I say that?

8 MR. FRIEDLANDER: I think you're  
9 referring to escheat, Your Honor.

10 THE COURT: I think I am, which is I  
11 think that you can make an argument that this should  
12 have been escheated by the Palmer Union Oil Company.  
13 How many different companies were there? We went from  
14 Palmer Union Oil Company to Taylor Wine Company?

15 MR. FRIEDLANDER: There were about  
16 half a dozen. The Palmer Standard Oil Company,  
17 Petrocarbon & Chemicals, Inc., Great Western  
18 Producers, Inc., then Taylor Wine Company and then  
19 Coca-Cola.

20 THE COURT: One of the things -- I  
21 really am going to ask Miss Brown to go back and --  
22 you know, the estate has a right to press nonfrivolous  
23 claims. Nonfrivolous claims. That means at each  
24 stage of the transactional process that occurred to



1 date there has to be a good faith basis to believe  
2 this: that the prior holder of the certificate did not  
3 receive proper notice, was not treated in accordance  
4 with the law, and that the holder of this certificate  
5 would have had a current right to complain. You have  
6 to make it a judgment about whether you can say in  
7 good faith that that is true for every one of the  
8 transactions, and that includes importantly the notion  
9 of whether there was repose on the part of people in  
10 commerce who relied upon the conduct of others in a  
11 previous transaction. What is the duty of alacrity  
12 that someone like Mr. Wagner had to act when these  
13 events occurred?

14                   Again, unless I miss my guess, one  
15 would hope that actually each of the merger  
16 transactions had clauses where the selling corporation  
17 made bindings, representations and warranties as to  
18 the nature of its capital structure and the number of  
19 shares acquired. Even if this most fundamental of  
20 provisions was blown in half the occasions, your  
21 clients would face four or five mergers in which that  
22 was done. You're going to be able to come forward  
23 with absolutely no evidence that your clients did not  
24 receive notice. You are all going to have -- look,

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1 one of the reasons why I'm very comfortable here, you,  
2 Mr. Margules, Miss Brown, Mr. Hurd, you're not people  
3 that are going to make stuff up. Really, there is no  
4 human being that you can talk to. You're going to be  
5 alleging that there was improper notice in nine  
6 mergers; that there was no lack of reasonable  
7 diligence on the part of a dead person that you've  
8 never met; no lack of diligence on the part of any  
9 advisor to them. You're also going to be doing  
10 that -- my suspicion is, maybe all of them are  
11 Delaware corporations. I love Delaware. I hope that  
12 we -- our wonderful law -- and was recognized by every  
13 single corporation in the chain. But there could be  
14 that there are other laws.

15                   Again, life can be amusing. But I  
16 take seriously the notion that, when corporations get  
17 sued, that costs their investors money. And if it's  
18 doing it needlessly, it raises the cost to capital in  
19 our nation in a way that can reduce economic growth.

20                   Now, there may be many reasons to sue.  
21 I don't know. You know, there's a confusing array of  
22 products with no calories. What's the difference  
23 between zero Coke and diet Coke? You know, I don't  
24 know. How can you tell which one doesn't have

1    caffeine?  You know, maybe you want to sue them.  
2    Maybe you prefer clear.  Who knows.  They're  
3    ubiquitousness and the fact that it may exclude some  
4    other soda products you want occasionally.  To go back  
5    and make them do a history lesson?  It seems to me  
6    that you ought to have some game first.  And I'm not  
7    saying what that is.  But I think you all ought to  
8    talk.  Because I also think, if a history lesson is  
9    done in a situation like this, it might be done at the  
10   researcher's expense, which is, if your client wishes  
11   to be the Jacques Cousteau of this, then he may have  
12   to pay the rate for sending the Calypso out to sea.

13                    I'm just really not quite getting it,  
14   because I don't think -- I think that people are in  
15   commerce entitled to rely upon events that happened.  
16   And you can't just sit around and say, "Aha.  You  
17   know, I've owned all this for all these years."  
18   Because if there was another 1.8, if there was another  
19   \$150 million -- right? --like Taylor Wines was bought  
20   by Coca-Cola?  What was the price?

21                   MR. FRIEDLANDER:  I don't know, Your  
22   Honor.

23                   THE COURT:  You don't know?

24                   MR. FRIEDLANDER:  No.  Look, there's

1 been diligence about the steps in the chain --

2 THE COURT: You don't know?

3 MR. FRIEDLANDER: Standing here today  
4 I don't know.

5 THE COURT: What's a range? Is it  
6 \$5 billion for Taylor Wines? I doubt it.

7 MR. FRIEDLANDER: I doubt it, Your  
8 Honor.

9 THE COURT: Don't you think  
10 \$150 million would probably have been a material  
11 portion of the purchase price of Taylor Wines?

12 MR. FRIEDLANDER: I think --

13 THE COURT: If it was a  
14 2 billion-dollar deal -- if it was a 2 billion-dollar  
15 deal, another 100 -- even 100 million -- I would think  
16 a normal acquirer would think that's a fairly major  
17 adjustment to the purchase price; right?

18 MR. FRIEDLANDER: Right. But I think  
19 the history is such that Coca-Cola has increased  
20 tremendously in value since 1977.

21 THE COURT: But that doesn't -- wait a  
22 minute. This was -- your client was supposed to have  
23 been a stockholder. Your client was supposed to have  
24 been a stockholder of Coca-Cola since 1977, and never

1 sued until when? Never sued.

2 MR. FRIEDLANDER: Right. Until Mr. --

3 THE COURT: Your client never actually  
4 sued; right? This estate thing -- who is behind this?

5 MR. FRIEDLANDER: Well --

6 THE COURT: Actually, your client was  
7 never -- your client was not a member of the Wagner  
8 family. Your client got this at an estate sale when?

9 MR. FRIEDLANDER: In June 2008.

10 THE COURT: Right. Mr. Harlow and he  
11 would go shopping at these sorts of things? Is this a  
12 tactic that Mr. Marohn and Mr. Harlow had?

13 MR. FRIEDLANDER: I don't know to what  
14 extent. I don't believe it's the only certificate  
15 they ever purchased or looked at.

16 THE COURT: And then they do this  
17 stuff?

18 MR. FRIEDLANDER: I don't know the  
19 extent of it, Your Honor, frankly.

20 THE COURT: I'm going to tell you, you  
21 need to -- I mean, I understand that Coca-Cola has  
22 done well since 1977. I'm actually using Coke in a  
23 speech I'm giving because it's -- it seems to me the  
24 New Coke is a good example of why you have a business

1 judgment rule, because you can have really excellent  
2 management that does things and then occasionally  
3 something goes wrong. And the New Coke was an example  
4 of that; right? Although I think there's some  
5 nostalgia for the New Coke and people want it back.  
6 Some sort of thing.

7                   So I don't think it makes it better  
8 that actually they bought it in 1977. And even if you  
9 reverse engineered it -- see, it makes it actually the  
10 windfall notion even worse: that your client's  
11 predecessor had something sitting in a drawer of some  
12 company's. Like whatever happened to Palmer Union?  
13 Was it successful?

14                   MR. FRIEDLANDER: I don't know. That  
15 would depend on the terms of that subsequent  
16 transaction with --

17                   THE COURT: Well, what were the terms?

18                   MR. FRIEDLANDER: I don't know, Your  
19 Honor.

20                   THE COURT: Okay. I'm going to  
21 actually say this right now. I'm not going to allow  
22 discovery in this case until you all do some detailed  
23 affidavit based on your own research and certify that  
24 there's a bona fide legal basis for this. I just

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1 don't think that's fair. It's just not a sport. I  
2 don't -- I honestly think that it's improper. I know  
3 you're not trying to do this. But honestly, I don't  
4 have any confidence that your client is not. You  
5 wonder what is it I'm going to say. I think that  
6 sometimes people do this sort of thing, buy this kind  
7 of stuff, because I can turn something for -- I bought  
8 this for 25 bucks, maybe even less. Somebody is  
9 selling it at an estate sale because they think it's a  
10 cool looking stock certificate. There are bars up in  
11 Philadelphia -- for example, a bunch of former banks  
12 and stock exchanges and things like that and bars and  
13 restaurants where you can buy one of these, put it in  
14 a frame. It looks fitting to the decor. But somebody  
15 else buys it and says, "I'm going to do a drive by of  
16 a public company. I'm going to claim that this is  
17 real." They have to then calculate. They probably  
18 already spent tens of thousands of dollars. It's  
19 already two excellent lawyers from one of our best  
20 firms in town, a busy member of the general counsel's  
21 staff of one of the most successful corporations in  
22 the United States who are here in late January to deal  
23 with this matter. And somebody buys something like  
24 this and they say, "Aha. I know that if I can pose a

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1 threat of costing them a quarter of a million dollars  
2 to just deal with it, can I turn 25 bucks into 50,000,  
3 75,000?" Well, that ain't justice. That ain't  
4 equity.

5                   Now, if there's some real thing --  
6 like, if your clients pay you and Mr. Margules and  
7 Miss Brown to actually go back and do the research, if  
8 that involves you travelling to other states -- for  
9 example, why does The Coca-Cola Company have to travel  
10 and dust off everything? Why would the burden be on  
11 them? They didn't invest in the Palmer Union Oil  
12 Company.

13                   If you got to go to Mobile, if you  
14 have to go to St. Louis, if you have to go to Albany,  
15 then the estate of Tony Marohn ought to, in the first  
16 instance, bear that cost. Again, I'm looking for  
17 every juncture. You don't even get to -- you don't  
18 get to Coke until the Talking Heads' second album is  
19 out, if I remember my punk new wave era when I had  
20 bangs and I was angry at the world for things other  
21 than cases like this.

22                   It may sound like I'm being stern  
23 here. I think I'm really just being proportionate.

24                   MR. FRIEDLANDER: Your Honor, if I



1 could -- I don't disagree with -- we anticipate -- one  
2 of the reasons we had this fact discovery period --

3 THE COURT: What I'm saying is, what  
4 you're doing with fact discovery is you're going to  
5 act like -- you act like they have all the information  
6 and you got a claim. I don't know -- it seems to me  
7 in the first instance you got a burden -- an  
8 evidentiary burden. They weren't a party to any  
9 merger except their merger with Taylor Wines.

10 One of the most elemental facts you're  
11 going to have to deal with is the following. The  
12 merger with Taylor Wines occurred in 1977?

13 MR. FRIEDLANDER: Yes.

14 THE COURT: If your client believed in  
15 the Taylor Wines merger, it was a stockholder of  
16 Taylor Wines and was entitled to consideration in that  
17 merger. Right?

18 MR. FRIEDLANDER: Well, the  
19 predecessor, yeah.

20 THE COURT: It failed to bring suit  
21 until when?

22 MR. FRIEDLANDER: Well,  
23 Coca-Cola Company bought the suit in 2010, I believe.  
24 December 2009.

1                   THE COURT: One of the reasons why  
2 Coca-Cola is allowed to bring suit, they can say  
3 you're time barred. You're out here, frankly,  
4 threatening us. You're coming by and doing exactly --  
5 I mean, look, I don't know these folks. But you know  
6 what I say has a basis in experience in America now,  
7 which is people simply using the cost of litigation to  
8 extract a payment that there's no equitable or legal  
9 basis for, and it's a form of -- you know, frankly, it  
10 has a lot of the feel of coercion -- of having to pay  
11 off somebody simply because the legal system doesn't  
12 have the mechanism where it can be cost justifiable to  
13 do the right thing.

14                   So what I'm saying here is, you can  
15 talk to Mr. Hurd. But my inclination is you're going  
16 to be putting in an 80-page affidavit with a bunch of  
17 appendices about, you know, hard to believe, but  
18 approaching 100 years of corporate history, and at  
19 each juncture explaining why the failure of your  
20 client's predecessors to act with alacrity in light of  
21 the relevant statute of limitations that would apply  
22 in each of the jurisdictions applicable, and why, in  
23 light of the contractual principles, including the  
24 principles that should protect somebody from

1 Coca-Cola, like Coca-Cola, if they got the right reps  
2 and warranties, why your client still has an all time  
3 client. If you can't answer that -- for example, if  
4 there's no one living, you have no basis because it's  
5 just making stuff up.

6           You know, I would urge you to look at  
7 the economics of these corporations, because it could  
8 be that Mr. Wagner -- whatever -- all these folks at  
9 some point, they just went away. Frankly, they viewed  
10 it as worthless. They had opportunities and mergers  
11 to do things they didn't.

12           I mean, I suppose that there's all  
13 kinds of things in people's basements that we can now  
14 turn into 8 percent of the national wealth. But what  
15 that would do -- would that mean that we were  
16 8 percent richer? No. It would mean that other  
17 people were 8 percent poorer.

18           So you can all, once we get this order  
19 entered -- when is a sensible time for you all to  
20 report?

21           MR. FRIEDLANDER: Sixty days?

22           THE COURT: Is this a big part of this  
23 estate? Is this holding it up because everybody  
24 thinks they're getting \$650 million?

1 MR. FRIEDLANDER: I don't know what's  
2 left of the estate proceedings in California, Your  
3 Honor.

4 THE COURT: The executor is who?

5 MR. FRIEDLANDER: There are two  
6 co-administrators of the estate. One of them verified  
7 the pleading is --

8 THE COURT: Who have you been dealing  
9 with?

10 MR. FRIEDLANDER: Vincent Starace is  
11 the co-administrator of the estate. I guess we've  
12 been dealing with his lawyer, or a lawyer for the  
13 co-administrator.

14 THE COURT: Have you ever met with  
15 him?

16 MR. FRIEDLANDER: I talked to the  
17 lawyer with the credit co-administrator on Friday. I  
18 never met with him.

19 THE COURT: Again, if it's worth  
20 \$150 million, it's worth a flight to California. You  
21 get the adults in the room and you talk to them. It's  
22 not sport. Serious. If it's serious, it's serious.  
23 I think they should take this transcript, I think they  
24 should look at the circumstances of Mr. Harlow with

1 their own consideration of Mr. Harlow's arrangements  
2 with their late father. Is this sort of something  
3 real or not? Is there a bona fide basis or not? Are  
4 they prepared to pay one of Delaware's best firms to  
5 do the kind of serious research required, do this kind  
6 of good faith affidavit or not? Cause it's going to  
7 happen. I'm not going to let you withdraw. And I'm  
8 not going to allow the estate to proceed pro se,  
9 because there's no such thing.

10                   And it's a really great litmus test  
11 because, if they actually think it's worth \$150  
12 million, then paying you all six figures, which is --  
13 my guess is it's going to take a lot of money.  
14 Because, see, any -- you know, you can get your  
15 Lindsey Buckingham out because any break in the chain  
16 you lose. And there's been an awful lot of links in  
17 the chain over time here.

18                   You know, I think we ought to get  
19 sensible and get smart. And because I also don't want  
20 to get into a situation, honestly, where we get down  
21 the road -- because these are the kinds of things we  
22 all know that end up with clients not wanting to pay  
23 the bill, too.

24                   So if it was motivated by sport or

1 thinking that Coca-Cola is just going to pay money --  
2 look, the great thing about it is now, after today,  
3 Mr. Harlow is out. So if it was his idea, he's out.  
4 Regrettably Mr. Marohn isn't around. But it's not  
5 like anyone within the family -- let's face it, when  
6 you have the meeting, please be pretty clear if  
7 anybody brings up they had visions of sugarplums.  
8 Since when? Since dad and Tony went by the estate  
9 sale in 2008 and bought this piece of paper? We like  
10 now sent our kid to Vassar rather than state college,  
11 bought a new vacation house. There's been no  
12 reliance. This is not a family heirloom.

13                   Sometimes in life you do something for  
14 sport. Again, the good thing is none of these people  
15 are in it. I take it very seriously. But I think the  
16 logical consequence of that is, I take it seriously  
17 for all the litigants.

18                   Why don't you report -- when you send  
19 in this order, send in another order requiring a  
20 status report in 60 days and we'll see where we're at.

21                   (Court Adjourned at 10:44 a.m.)

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