



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE SHARES OF COMMON STOCK :  
OF THE COCA-COLA COMPANY, :  
 :  
 :  
THE COCA-COLA COMPANY, :  
a Delaware Corporation, :  
 :  
 :  
Plaintiff, :  
 :  
 :  
vs. : Civil Action  
 : No. 5156-CS  
 :  
SCOTT HARLOW and the Estate :  
of TONY MAROHN, :  
 :  
 :  
Defendants. :

- - -

Chancery Conference Room  
New Castle County Courthouse  
500 North King Street  
Wilmington, Delaware  
Wednesday, April 18, 2012  
10:00 a.m.

- - -

BEFORE: HON. LEO E. STRINE, JR., Chancellor.

- - -

STATUS CONFERENCE

---

CHANCERY COURT REPORTERS  
500 North King Street  
Wilmington, Delaware 19801  
(302) 255-0521

1 APPEARANCES:

2 MARK S. 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

10 DAVID J. MARGULES, ESQ.  
11 JOEL FRIEDLANDER, ESQ.  
12 JAMIE BROWN, ESQ.  
13 Bouchard, Margules & Friedlander, P.A.  
14 for Defendants

15 - - -

16  
17  
18  
19  
20  
21  
22  
23  
24

1                   THE COURT: Good morning, everyone.  
2 This is going to be brief. I was exceedingly clear,  
3 Mr. Friedlander, and you're exceedingly bright and  
4 respected by this Court. I don't know why this got in  
5 the media. I don't. I don't really care. But  
6 sometimes in life -- I have a family member who was  
7 always good at putting himself -- whenever there was a  
8 chance to move closer in off the tree limb, he always  
9 took an opportunity to get even farther out on the  
10 tree limb, making it more difficult for him to ever  
11 come back.

12                   I don't really care whether this case  
13 goes forward. I'm a judge. Doesn't matter to me.  
14 But it's not humorous. And really, if the reason -- I  
15 understand that Coke sued for declaratory judgment. I  
16 get it. There is a reason. Someone showed up and  
17 said, I want 100 and some million dollars from you  
18 because I bought a piece of paper at an estate sale.

19                   Now, I'm sure that Coke will go away  
20 if the person who sent that letter would revoke that  
21 demand in a binding and final way. So I don't know  
22 that that's happened, but you have 30 days to do what  
23 I originally said. And there will be affidavits from  
24 Delaware and outside counsel, and you will trace every

1 transaction, and you will address the things that I  
2 said. And you will explain why it is that you  
3 believe, in good faith, under the laws, all the  
4 applicable laws -- and if that means that you have to  
5 cover 27 different laws, that is the choice of your  
6 client.

7           And if he doesn't wish to pay you for  
8 that because it just might be the case that someone  
9 who was a stockholder in I don't know how many  
10 different corporations over the years didn't act  
11 within a certain period of time to preserve his or her  
12 rights, or, frankly, if neither of you can certify --  
13 no one in the case can certify in good faith that it  
14 was actually lost, that there wasn't actually a  
15 replacement given to someone that they sold in due  
16 course, if you can't actually stand behind your claims  
17 because you've done the research, then I expect you to  
18 do what's necessary; but you have 30 days to do it.

19           And I'm not going to go forward with  
20 this case on the pretense that, somehow, Coke reached  
21 out, found your client, who was just sitting at home  
22 by the fireplace with his framed stock certificate,  
23 and they just wished to eradicate any ability of him  
24 to keep it hung on his wall. I think that they would

1 even send a four-pack of 64-ounce Cokes, Coke Zeros,  
2 anything of his choice, plus probably even spring for  
3 the Domino's Pizza, to enjoy a weekend in front of his  
4 big-screen TV watching whatever sporting events he  
5 wants.

6           But there was really no lack of  
7 clarity in what I said, Mr. Friedlander. And you were  
8 the one there that day. And it's really not  
9 unreasonable. And if the reality is that -- if it  
10 would be true -- see, I'm from Delaware. And it seems  
11 to me if there is a merger in a Delaware case, and you  
12 kind of wait forever, and somehow, your argument is  
13 that I didn't get my replacement stock, and you sue  
14 like 12 years later, and there have been two  
15 additional intervening mergers, and there are plenty  
16 of causes of action that you can bring, you're going  
17 to face a statute of limitations defense. And you're  
18 going to have to explain why it is that it's okay to  
19 bring a claim 12 years after something happened, why  
20 it's still timely, and what was excusable about it.

21           And when we're now talking about  
22 something that I don't even -- frankly, what you  
23 submitted was so inadequate that you don't even begin  
24 to trace any of it. You don't even begin to tell the

1 story of when this started. But I do know that it  
2 goes back to when people were very clear what the most  
3 recent World War was, well before the Grenada era of  
4 some of the people in the room who are lucky enough to  
5 believe that the post-war era refers to after we freed  
6 the medical school. Some may not even remember that.

7           So again, I'm not trying to be  
8 difficult here, but there is a realistic situation  
9 going on. I am not unaware of it. And there is a  
10 very simple solution. If your client doesn't believe  
11 that the investment necessary to actually have his  
12 lawyers -- and I want in-state and out-of-state  
13 counsel to certify, I want an affidavit of good faith,  
14 I want it researched, I want -- and I was not unclear  
15 about this the first time. So I'm not going to get  
16 into a back and forth.

17           If at the end of 30 days, you can't do  
18 it, then say that. And if you want to bring on the  
19 case at the end of the 30 days that says that Coke has  
20 a duty to research your claims, you know, you can do  
21 that, but I'm telling you now that part of what I'm  
22 giving you is the chance to actually show that the  
23 number between a dozen and ten is not in play.

24           And in terms of, for example, there's

1 nothing about them bringing a declaratory judgment  
2 action in a situation where someone is threatening  
3 them that in any way waives a statute of limitations  
4 defense. In no way. So in reality, right, you're  
5 going to have to face that anyway.

6           And if what you're going to do is hit  
7 and hope, that's what I'm really -- and I'm  
8 seriously -- because the other thing, then, is we're  
9 going to talk about bonds and we're going to talk  
10 about what your client's resources are to, you know,  
11 post security for any discovery that occurs. And I  
12 just don't want to get into this.

13           And again, I was dismayed, honestly,  
14 when somebody showed me that there had been somehow --  
15 because, unfortunately, the media takes an interest in  
16 these kinds of things because they think they're kind  
17 of humorous. And I didn't know anything about the  
18 person who bought it or whatever. I mean, somebody  
19 mentioned that, you know, our court got mentioned on  
20 like The Today Show. You know, I don't know where  
21 that comes from. And again, it's the kind of tree  
22 limb stuff that people get themselves into.

23           MR. MARGULES: Your Honor, if I can --  
24 there is not going to be any back and forth here. In

1 fact, I think, based on a conversation, that we and  
2 Coca-Cola are on the same page, and the likelihood is  
3 that this case is going to be going away in the next  
4 couple of days.

5                   But first of all, I just want to say  
6 to Your Honor that I take Your Honor's comments as  
7 addressed to me, not to Mr. Friedlander.  
8 Mr. Friedlander covered that hearing only because I  
9 was unavailable. This has been my case, and any of  
10 the failings in this case -- and I need to advise the  
11 Court of a serious error that we found last night that  
12 we've advised the Coca-Cola folks of that I think is  
13 what puts the nail in the coffin.

14                   And I take responsibility for all of  
15 this, Your Honor. And I apologize to the Court and I  
16 apologize to my friends representing Coca-Cola and to  
17 their client to the extent that my inadequacies have  
18 created a problem.

19                   But in any event, if I could just take  
20 a few minutes to explain what we discovered last  
21 night.

22                   As Your Honor is aware, we were  
23 brought into this case well after it started. We  
24 never had any contact with Mr. Marohn, who died before



1 we were involved. When the case started and,  
2 actually, when the pre-litigation communications with  
3 Coca-Cola occurred, there was a calculation done of  
4 the number of shares.

5           When we got involved, we were advised  
6 of the calculation. And I went back through the  
7 materials to confirm its accuracy. There were some  
8 descriptions of transactions that were somewhat vague.  
9 But one of the things that I gave some deference --  
10 reliance to was the fact that we had correspondence  
11 from Coca-Cola that at least acknowledged the chain of  
12 transactions, but not the numbers, and that Coke had  
13 never challenged the numbers. And while I looked at  
14 the numbers, I, you know, I made certain assumptions.

15           Late last week -- and I have a copy  
16 for the Court and I provided a copy to Coca-Cola's  
17 counsel -- we received this packet of information from  
18 an individual who was representing the Salvation Army  
19 in the late 1990s. He's not a lawyer. He's a  
20 stockbroker.

21           They had a Palmer Stendel -- so the  
22 second company in the chain -- they had a Palmer  
23 Stendel certificate. There were contacts with  
24 Coca-Cola at the time in which they sought to have

1 Coca-Cola essentially buy the stock or issue Coca-Cola  
2 stock. Coca-Cola politely declined to do so. They  
3 sent us the information.

4 I was not -- for various reasons, I  
5 was not able to really review this material until over  
6 the weekend. When I did, I reached the conclusion  
7 that the chain that they describe in their materials  
8 results in a drastically different calculation than  
9 what we had.

10 Last night, I was finally able to  
11 really sit down and parse through it. And the  
12 indications are that there were errors made in our  
13 calculation due to some of these ambiguities and due  
14 to one reverse stock split being missed.

15 The stock, it turns out, assuming the  
16 accuracy of the materials that we received, which I do  
17 not dispute, the stock has I don't want to say a  
18 nominal value but not very much value, probably in the  
19 range of 12 to \$15,000. I've advised Coke of that  
20 last night.

21 Mr. Friedlander and I spent a great  
22 deal of time on the phone with counsel for the estate  
23 explaining the situation. And while I don't want to  
24 go into the advice that we gave, we did give our

1 perspective on what ought to happen with the case  
2 going forward. We reached out to the coexecutors. We  
3 were unable to get them on the phone. We need to  
4 confer with them, which we hope to do over the next  
5 couple of days.

6 THE COURT: Sure.

7 MR. MARGULES: And my hope is that  
8 within the next couple of days, we'll have this  
9 disposed of. And I want to again apologize to the  
10 Court and to counsel for the circumstances.

11 I can address Your Honor's thoughts on  
12 the affidavit. I suspect that there is no purpose  
13 served to do so. Your Honor has been very clear on  
14 that.

15 THE COURT: And again, I don't wish --  
16 I have the highest regard for you and Mr. Friedlander  
17 and your firm. I'm sure that Mr. Hurd shared with his  
18 client there are probably few firms they'd be happier  
19 having handle this.

20 I just think the nature of this --  
21 again, I'm not against -- if people want to take -- I  
22 consider this sort of treasure hunting. But the  
23 problem is that there's a cost to society of treasure  
24 hunting if it's not done in a certain way. And I

1 wasn't trying at all to put anybody through anything  
2 that wasn't in my view directly related to what we  
3 were ultimately getting.

4 MR. MARGULES: Of course.

5 THE COURT: That's why this -- the  
6 reality is we all know, because we're pretty  
7 experienced at this, there's one representation and  
8 warranty that's often never qualified in a merger  
9 agreement, and that's always the certification of the  
10 capital structure of the firms involved when they do  
11 the transfers. Because one of the things you  
12 absolutely need to have when you do a merger on both  
13 sides is what are you giving and what are you getting?

14 And there is often -- almost every  
15 other rep will end up in a closing condition or  
16 something like that or, frankly, having a limitation,  
17 but that one is almost always flat because you've got  
18 to do that. And there are a lot of things about --  
19 you know, you get to sue if you don't get your stock  
20 certificate. You get to do all that kind of stuff.

21 That's why I said I didn't actually  
22 want to get into a back and forth because I'm not  
23 upset in any way, but I would describe it more as sort  
24 of resolute. So I'm sure it's not happy for the

1 estate, but at least we've unearthed something closer  
2 to economic reality.

3 MR. CASHDAN: Your Honor, if I may say  
4 one thing. Jeff Cashdan from the firm of King &  
5 Spalding for the Coca-Cola Company. I want the record  
6 to be clear that we did get this information this  
7 morning, and we'll wait for the estate to get back to  
8 us within a couple of days as to their plans, but I  
9 didn't want there to be any confusion. Coca-Cola's  
10 position is not that this stock is worth in the range  
11 of 10 to \$15,000. Our position is it's worth in the  
12 range of zero.

13 THE COURT: I assumed that that was  
14 the case.

15 MR. MARGULES: And Your Honor, again,  
16 to be clear, we always understood that Your Honor's  
17 thoughts about how this case ought to proceed and  
18 comments about the case were driven by the Court's  
19 reflection on Delaware law, not on anything else. But  
20 if I could just --

21 THE COURT: I would just say I was  
22 also concerned about the incentive system that would  
23 be created and the possible adverse effect on the cost  
24 of capital for investors, because the reality is there

1 are probably a lot of cool-looking stock certificates  
2 floating around in the world that are related to  
3 moribund companies.

4 MR. MARGULES: Of course.

5 THE COURT: And if everybody can just  
6 start rising through, and then unfortunately -- again,  
7 your firm is not one that's ever been engaged in this  
8 activity, but we live in a society where, frankly,  
9 it's not uncommon for people to file claims simply on  
10 the premise that if we can get past dismissal in this  
11 jurisdiction, the costs of discovery, you know, are  
12 going to be X, so you might as well give us X minus  
13 50 percent and we'll go away.

14 And so I think we understand each  
15 other. You shouldn't feel badly. As I said, I'm not  
16 in a -- I am barely caffeinated much less in an  
17 emotional mood. So I don't want you to feel that I'm  
18 upset.

19 And I appreciate that you stood up and  
20 took it on yourself rather than me busting on  
21 Mr. Friedlander.

22 MR. MARGULES: Your Honor --

23 THE COURT: He had been at the  
24 hearing.

1                   MR. MARGULES: Your Honor is free to  
2 bust on me, which would not be the first time.

3                   THE COURT: It still would be -- I'm  
4 still trying to think, after how much busting on me  
5 has been done, how many years I would have to bust on  
6 you for it to balance out. It would be fairly close,  
7 I think.

8                   MR. MARGULES: I'm not sure I've been  
9 keeping track of that, Your Honor. In terms of the --

10                  THE COURT: Since I believe in one of  
11 my first trials as a judge, you referred to my lengthy  
12 experience in the trial context.

13                  MR. MARGULES: It was a witness, I  
14 believe, Your Honor. I merely laughed.

15                  But in terms of the press coverage, I  
16 hope that Your Honor realizes that we do not try cases  
17 in the press, and I can shed some light on what  
18 happened if Your Honor cares to hear it.

19                  THE COURT: No. I'm confident that it  
20 emerged in other jurisdictions.

21                  MR. MARGULES: Well, I want to be fair  
22 to my clients as well. I received a call shortly  
23 after the letter that we submitted from a Reuters  
24 stringer. There was something that they picked up. I

1 assume it was just a filing. I don't know what it  
2 was. They elected to do a story. I spoke to them  
3 only off the record. I made one comment on the  
4 record, which was that to the effect that Your Honor  
5 had a view of the law, that we hoped we could persuade  
6 the Court to see the facts otherwise.

7           That story was then picked up that  
8 Friday evening by Diane Sawyer's program. It's at  
9 ABC. And then from there, it kind of spun out of  
10 control. But it was not our doing.

11           THE COURT: The press just loves -- I  
12 mean, one of the other cases in Chancery that they  
13 were infatuated with was the fight over this creepy  
14 collection of memorabilia, if you could call it that,  
15 by the doctor who had been criminally prosecuted, the  
16 one who had been Elvis' doctor at the end of his life.  
17 and they had things including -- Elvis, besides liking  
18 peanut butter and banana sandwiches, liked to put  
19 stuff up his nose. So they had his nasal hydrator and  
20 things to deal with the problems of his nose because  
21 of the other things, detritus from his medical -- all  
22 kinds of creepy stuff, and there was a fight in the  
23 Court over the collection. And that probably received  
24 more attention than Time Warner.



1           It's just the press likes this kind of  
2 stuff. It's kind of got a human interest appeal. And  
3 it was the person affiliated with one of these things  
4 who has ruined The History Channel and PBS. What I  
5 mean is every time you turn on The History Channel  
6 now, it's about somebody finding like a wall socket  
7 from, you know --

8           MR. MARGULES: I guess the public got  
9 tired of Hitler documentaries.

10          THE COURT: How could you get tired of  
11 all that stuff? But now you've got to go to The  
12 Military Channel for that. So I get it. I'm just  
13 saying that sometimes that stuff gets people -- again,  
14 when things get in the press, it gets harder for  
15 people to kind of -- you know, I don't think that many  
16 people are sitting around, checking Diane Sawyer's  
17 program, wondering, you know, what the outcome of the  
18 case is going to be.

19                 But what do you suggest in terms of  
20 reporting back?

21          MR. MARGULES: I would ask for until  
22 Monday, if that's acceptable.

23          THE COURT: Okay.

24          MR. MARGULES: And I'm hoping at that

1 point we'll be able to report that Your Honor doesn't  
2 have to deal with this anymore.

3 THE COURT: Okay.

4 MR. CASHDAN: That's fine, Your Honor.

5 Just to be clear, you mentioned The  
6 Today Show. The California co-counsel did appear on  
7 The Today Show.

8 THE COURT: Oh, did he?

9 MR. CASHDAN: With a report to the  
10 tune of the Beverly Hillbillies in the back of the  
11 story, unfortunately. There are members of the public  
12 offering Palmer Stendel stock certificates on eBay at  
13 inflated prices, referencing the media in this case.

14 So we would advise the Court, to the  
15 extent that the estate wants to walk away from this  
16 case, we would want something issued very clearly that  
17 doesn't give an impression to the public that we've  
18 reached some kind of monetary settlement.

19 MR. MARGULES: Assuming that there's  
20 no confidentiality agreement, then Coca-Cola is  
21 obviously free to issue any statements that they want  
22 about what happened, including the terms of the  
23 settlement.

24 THE COURT: Why did your California

1 co-counsel go on The Today Show? Other than the  
2 obvious reason that for California lawyers, it's a  
3 career path?

4 MR. MARGULES: Your Honor, could we  
5 discuss this off the record?

6 THE COURT: Okay. Then we don't need  
7 to.

8 MR. MARGULES: I'm just concerned  
9 about a potential privilege --

10 THE COURT: No, you don't need to. I  
11 get you. All I'm saying is I did not know that, and  
12 I'm glad I did not know that. Again, somebody just  
13 came up to me and said, "Somebody mentioned this case  
14 and that you said it reminded you of the Beverly  
15 Hillbillies, and it was on The Today Show." And that  
16 floored me. All I'm saying is I do think that's the  
17 sort of thing that, unfortunately -- it's exactly the  
18 reason why I imposed the requirements I did.

19 MR. MARGULES: Sure.

20 THE COURT: And to the extent that  
21 somebody's, again, fortune hunting or sort of rattling  
22 things, that's not necessarily ideal. I don't want to  
23 go off the record. I don't even want you to have to  
24 speak to it. I will say as a judge, that disappoints

1 me. And, you know, especially, I would say, why it  
2 disappoints me is what was coming back to me in the  
3 form of a report was not what I had asked for.

4 MR. MARGULES: I understand,  
5 Your Honor.

6 THE COURT: And the California  
7 co-counsel had to have known that. And when he could  
8 have been, or she -- I don't even know who it is,  
9 female or male, and I don't care -- could have been  
10 working on what was required for the case, it was  
11 getting, you know, buffed up to go appear with Matt  
12 Lauer.

13 Now, is it cooler to be on The Today  
14 Show? I suppose it is, but it does create problems  
15 for the defendant, or Coca-Cola, which is the  
16 plaintiff/cross-defendant, also.

17 MR. MARGULES: Yeah, and that was not  
18 part of the calculus. And there are a few things that  
19 I can't say, and I really feel I probably should. I  
20 can tell the Court that after the ABC news report, I  
21 was the primary recipient of inquiries. I received  
22 inquiries from at least seven or eight national media  
23 outlets requesting interviews.

24 I declined all interviews, but I

1 turned the information over to the estate's counsel  
2 and to the counsel to Mr. Marohn's daughter, who is  
3 one of the coexecutors. She, the client, made the  
4 decision to do one national interview. And my  
5 understanding is that it was driven by a concern that  
6 some of the reporting, in her view, reflected badly on  
7 her father, and she wanted to respond to some  
8 characterizations.

9 THE COURT: Was he the one -- again, I  
10 don't know anything about this. Was he on one of  
11 these pawn shows or history's finds, I guess? It  
12 started out on PBS.

13 MR. MARGULES: Not that I know of. My  
14 understanding is that he just went to an estate sale  
15 and bought a stock certificate. I may be wrong, but  
16 I've never heard anything to that effect.

17 Anyway, she felt strongly that she  
18 needed to defend her late father from  
19 characterizations in the media, and she felt strongly  
20 that she wanted to do one interview. The producer of  
21 The Today Show told me that their willingness to do a  
22 story involving the client was conditioned on having  
23 access to a lawyer as part of the interview. And so  
24 under those circumstances, Mr. Morosoff agreed to

1 appear with his client on the interview.

2           Now, the last that I had heard was  
3 over the weekend, before the interview was done. And  
4 at that point, it wasn't even 100 percent certain that  
5 they were going to do it. So I haven't seen it, and  
6 it wasn't until this morning that I was told that, in  
7 fact, they had been on The Today Show. So I don't  
8 know what was said or what wasn't said or how it came  
9 across, but this was a client decision, not a lawyer  
10 decision. Mr. Morosoff's initial reaction was the  
11 same as ours, which is, let's not talk to the press.

12           So I understand Your Honor's concern  
13 and frustration. We certainly share it, as did  
14 Mr. Morosoff, but the client felt strongly that she  
15 wanted to do this, and he was accommodating the wishes  
16 of a client.

17           THE COURT: Okay. Well, it was an  
18 unusually diligent Reuters stringer, I suppose. I  
19 mean, it's just a little odd.

20           MR. MARGULES: Well, it's not uncommon  
21 for people to flag large companies, and when there is  
22 a filing, see if there is something to it. I suspect  
23 that's what happened. I don't know.

24           THE COURT: I mean, look, if

1 somebody -- there are people who cover this court, and  
2 if they picked up something amusing -- part of what a  
3 reporter does, frankly, is this kind of stuff.  
4 Unfortunately, it just doesn't necessarily have  
5 amusing consequences for Coca-Cola and Coca-Cola  
6 stockholders.

7 MR. MARGULES: I understand, and we  
8 understand, and we share the Court's perspective on  
9 that.

10 THE COURT: Good. So I'll hear from  
11 you all on Monday?

12 MR. MARGULES: If not before.

13 THE COURT: Thank you.

14 (Court adjourned at 10:30 a.m.)

15

16

17

18

19

20

21

22

23

24

CERTIFICATE

I, JEANNE CAHILL, Official Court Reporter for the Court of Chancery of the State of Delaware, do hereby certify that the foregoing pages numbered 3 through 23 contain a true and correct transcription of the proceedings as stenographically reported by me at the hearing in the above cause before the Chancellor of the State of Delaware, on the date therein indicated.

IN WITNESS WHEREOF I have hereunto set my hand this 19th day of April, 2012.

/s/ Jeanne Cahill

-----  
Official Court Reporter  
of the Chancery Court  
State of Delaware

Certificate Number: 160-PS  
Expiration: Permanent