

1 Juli E. Farris (SBN 141716)  
KELLER ROHRBACK, L.L.P.  
2 1201 Third Avenue, Suite 3200  
Seattle, Washington 98101  
3 Telephone: (206) 623-1900  
4 Facsimile: (206) 623-3384  
jfarris@kellerrohrback.com

5 Matthew Righetti (SBN 121012)  
6 RIGHETTI LAW FIRM, P.C.  
456 Montgomery Street, Suite 1400  
7 San Francisco, CA 94104  
Telephone: (415) 983-0900  
8 Facsimile: (415) 397-9005

9 Attorneys for Plaintiffs  
10 *Additional Counsel on Signature Page*

11 **UNITED STATES DISTRICT COURT**  
12 **EASTERN DISTRICT OF CALIFORNIA**  
13 **SACRAMENTO DIVISION**

14 GREGORY JOHNSON, et al.,

15 Plaintiffs,

16 v.

17 CLAIR R. COUTURIER, JR., et al.,

18 Defendants,

19 DARLEEN STANTON,

20 Plaintiff,

21 v.

22 CLAIR R. COUTURIER, JR., et al.

23 Defendants.  
24  
25  
26

No. 2:05-cv-02046 RRB GGH  
(Lead Case-Consolidated)

**SECOND ORDER TO SHOW  
CAUSE AND TEMPORARY  
RESTRAINING ORDER**

No. 2:07-CV-01208 WBS-JFM

(Consolidated under  
2:05-CV-02046 RRB KJM)

1 Upon Plaintiffs' Second Application for an Order to Show Cause and Temporary  
2 Restraining Order to be issued against Defendant Clair R. Couturier, Jr., filed October 15,  
3 2008, along with all supporting declarations and exhibits as well as the Amended Complaint  
4 (Dkt. 150),

5 Let Defendants show cause before the Honorable Ralph R. Beistline, United States  
6 District Judge for the District of Alaska, sitting by assignment in the Eastern District of  
7 California *in writing on or before October 24, 2008*  
8 ~~California at a Term of the Court to be held at the United States Courthouse, 501 I Street,~~

9 ~~Sacramento, California, on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, why an Order~~  
10 should not be entered granting a Preliminary Injunction against Defendant Clair R. Couturier,  
11 Jr., his agents, servants, employees, attorneys, and all persons in active concert or  
12 participation with them, for the following relief:

13 1. Imposing a constructive trust upon all property (wherever it is now located and  
14 in whatever form it now exists) which Defendant Clair R. Couturier, Jr. received from  
15 TEOHC and/or the TEOHC Employee Stock Ownership Plan (the "ESOP") as a result of the  
16 Agreement and Plan of Merger dated January 21, 2004, the First Amendment to Agreement  
17 and Plan of Merger dated July 20, 2004, and all subsequent agreements with TEOHC, N&NW  
18 Manufacturing Holding Company, Inc. ("N&NW"), and Noll Manufacturing Corporation  
19 ("Noll"), in connection therewith, including but not limited to, any and all assets deposited in  
20 the Pensco Trust IRA Account for Clair R. Couturier, Jr., the real property and capital  
21 improvements located at 113 Wanish Place, Palm Desert, California, and all art work,  
22 furniture, and furnishings contained therein, the 2006 Bentley vehicle (VIN  
23 SCBCR63W16C030768), and the golf club membership at the Big Horn Golf Club issued to  
24 Clair R. Couturier, Jr. (hereinafter referred to as the "Constructive Trust assets");  
25  
26

1           2.       Ordering Clair R. Couturier, Jr. to preserve the Constructive Trust assets and  
2 all profits generated there from (wherever they are now located and in whatever form they  
3 now exist) during the pendency of this case;

4           3.       Enjoining Defendant Clair R. Couturier, Jr. from transferring, secreting,  
5 assigning, pledging, mortgaging, or hypothecating any interest in the Constructive Trust  
6 assets, wherever they are now located and in whatever form they now exist, during the  
7 pendency of this case;

8           4.       Ordering Defendant Clair R. Couturier to report and account to Plaintiffs and  
9 this Court within twenty (20) days of the date of issuance of the Preliminary Injunction as to  
10 the following information:

11                   A.       An accounting of all the Constructive Trust assets received from  
12 TEOHC, N&NW, and Noll from the Agreement and Plan of Merger, the First Amendment to  
13 Agreement, and Plan of Merger, and all subsequent agreements in connection therewith;

14                   B.       Identification of where and when all Constructive Trust assets were  
15 deposited, invested, and/or transferred, including account name and number at each  
16 institution, through present date;

17                   C.       An accounting of all profits and/or losses generated from deposits,  
18 investments, and/or transfers of the Constructive Trust assets;

19                   D.       An accounting of all consideration or value received by Couturier for  
20 the transfer of any of the Constructive Trust assets to any transferee as well as the identity and  
21 address of each transferee, the date of each transfer, and a description of each asset transferred  
22 to each transferee; and  
23  
24

25  
26

1 E. The current value of each of the Constructive Trust assets (and profits  
2 there from) held by Clair R. Couturier, Jr., personally, constructively, or through any trust.

3 5. Such other and further relief as the Court deems just and proper under the  
4 circumstances of this case.

5 Sufficient cause appearing therefore, it is hereby

6 ORDERED that answering papers shall be served on or before 5:00 p.m. PST on  
7 October 20, 2008, and reply papers may be served on or before 5:00  
8 p.m. PST on October 23, 2008, and it is further

9 ORDERED that sufficient cause appearing that personal service of a copy of this  
10 Order and the papers on which it is based shall be made upon counsel for Defendant Clair R.  
11 Couturier, Jr. on or before October 17, 2008, shall be deemed good and  
12 sufficient service upon said Defendant.  
13

14 Further, based on Plaintiffs' submissions in this Motion, the Court finds that Plaintiffs  
15 will suffer immediate and irreparable harm in the absence of a Temporary Restraining Order.  
16 This Court has previously made specific findings that Plaintiffs have carried the burden of  
17 showing probable success on the merits and are likely to show that the individual Defendants,  
18 including Couturier, engaged in a scheme to defraud the ESOP in breach of their fiduciary  
19 duties. (Dkt. 398.) Specifically, the Court finds that Plaintiffs have adequately shown by  
20 specific and particular facts that Defendant Couturier has engaged in multiple transfers of  
21 certain of the Constructive Trust assets since his receipt of same, that Defendant Couturier has  
22 attempted to conceal such transfers from Plaintiffs during the course of this litigation, and that  
23 he now claims that he does not have sufficient assets to pay his attorneys. Because Plaintiffs  
24 have demonstrated that they have a substantial interest in the Constructive Trust assets -- the  
25  
26

1 property received from the scheme to defraud – and Defendant Couturier has concealed and  
2 claims not to possess over \$34 million in assets received since 2004, this Court finds that  
3 Plaintiffs acting on behalf of TEOHC and the ESOP will suffer irreparable and immediate  
4 injury if Defendant Couturier, his agents, servants, employees, attorneys, and all persons in  
5 active concert or participation with them, are not mandatorily enjoined to preserve the  
6 Constructive Trust assets and prohibitively enjoined from transferring, secreting, assigning,  
7 pledging, mortgaging or hypothecating any interest in the Constructive Trust assets, wherever  
8 they are now located and in whatever form they now exist.  
9

10 Further, this Court finds that the issuance of a Temporary Restraining Order is  
11 appropriate in that Defendant Couturier was served with a copy of this Motion simultaneous  
12 with its filing with this Court and will suffer no injury from this Order which preserves the  
13 status quo until all parties can be heard on the request for a preliminary injunction. The Court  
14 also finds that Plaintiffs have filed the Declaration of Gary D. Greenwald supporting the  
15 existing irreparable injury, detailing Plaintiffs' efforts to effect notice to the affected party or  
16 counsel, and demonstrating good cause why prior notice was not given of these Motion  
17 papers.  
18

19 Sufficient cause appearing therefore, it is hereby

20 ORDERED that

21 A. Defendant Clair R. Couturier, Jr., his agents, servants, employees, attorneys,  
22 and all persons in active concert or participation with them, are enjoined to preserve the  
23 Constructive Trust assets and all profits generated there from, wherever they are now located  
24 and in whatever form they now exist, and  
25  
26

1 B. Defendant Clair R. Couturier, Jr., his agents, servants, employees, attorneys,  
2 and anyone in active concert or participation with them, are enjoined from transferring,  
3 secreting, assigning, pledging, mortgaging, or hypothecating any interest in the Constructive  
4 Trust assets, wherever they are now located and in whatever form they now exist.

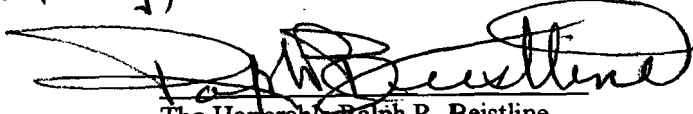
5 IT IS FURTHER ORDERED that the issuance of the Temporary Restraining Order is  
6 conditioned upon the payment by Plaintiffs of a cash bond in the amount of \$5,000.00,  
7 to be deposited with the Clerk of Courts as security for this Order.

8 This Temporary Order shall remain in full force and effect for ten (10) days following  
9 the date of issuance, pursuant to Fed. R. Civ. P. 65(b)(2).

10 On two (2) days' notice to Plaintiffs, Defendants may appear and move to dissolve or  
11 modify this Order.

12 This Order issued at 11:00 a.m./p.m., on October 16, 2008.

13 DATED: October 16, 2008, ~~Sacramento, California~~  
14 Anchorage, Alaska

15   
16  
17  
18 The Honorable Ralph R. Beistline  
19 United States Judge  
20  
21  
22  
23  
24  
25  
26