Case: Weinberger v. UOP, Inc.
Interview of Michael Hanrahan, Prickett, Jones & Elliott, P.A.
Interviewed by: A. Thompson Bayliss, Abrams & Bayliss LLP
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1 MR. BAYLISS: I'm Tom Bayliss. I am here with Mike
2 Hanrahan of Prickett, Jones & Elliott, and we're here to talk
3 about the Weinberger case. Mike, could you tell us how you got
4 involved in the case? #00:00:44#
5 MR. HANRAHAN: I joined Prickett June 1, 1978, which
6 was shortly after the Weinberger v. UOP case was filed, but I
7 actually did not work much with Bill Prickett until after May
8 1979. So, I was not really involved in the early part of the
9 case. Was aware that it existed, but it really wasn't until
10 after the Supreme Court's opinion that I became heavily
11 involved in it. Prior to that, I had some involvement.
12 MR. BAYLISS: Let's fast forward to the post-trial
13 opinion. It's 79 pages long; it seems thorough. What was the
14 mood in the office? #00:01:35#
15 MR. HANRAHAN: We were not happy. Obviously, it
16 hadn't turned out well. The 79 pages was long for an opinion
17 at that time. And it was also long for an opinion by
18 Chancellor Brown. But, when you look at the number of issues
19 in terms of burden of pleading, burden of proof, and the

1 valuation issues, there was a lot to deal with, and he took
2 the time and made the effort to do that.
3 MR. BAYLISS: You mentioned the experts. The
4 defendants proffered an expert who presented a valuation based
5 on the Delaware Block Method. Mr. Weinberger and Prickett
6 Jones presented Ken Bodenstein, who proffered a valuation
7 based on a premiums paid analysis and discounted cash flow.
8 Why? #00:02:39#
9 MR. HANRAHAN: Ken was out at Duff & Phelps, and Ken
10 told Bill Prickett these are the methods that actually get
11 used in valuing companies. And it wasn't the Delaware Block
12 Method, but Bill was convinced that this made sense and so he
13 went forward with Ken's analysis.
14 MR. BAYLISS: At the time, the Delaware Block Method
15 was 'the' valuation method. It seems incredibly risky to
16 present an expert who discards it in favor of a discounted
17 cash flow analysis. Why was Bill Prickett willing to take that
18 kind of risk? #00:03:33#
19 MR. HANRAHAN: He was convinced that Ken knew what
20 he was talking about and that it made sense that the value of
21 the company was based on what you anticipated it was going to
22 produce in terms of cash flows in the future rather than a
23 more historical analysis of what the company had done in the
24 past because there have been companies that had done well in

1 the past, but they're not going to do well in the future.
2 There are companies who may have struggled in the past, but
3 are expected to do very well in the future. So, that, really,
4 was a turning point in terms of the focus on valuation of
5 companies.
6 MR. BAYLISS: At the time, did you expect discounted
7 cash flow analysis to catch on? #00:04:29#
8 MR. HANRAHAN: I don't know that there was a real
9 expectation that – and obviously, it didn't catch on with
10 Chancellor Brown. He essentially rejected it twice, once after
11 trial and once on remand at the damages trial. And he
12 considered it, but he ultimately concluded that there were
13 elements that were too speculative, particularly the discount
14 rate. And so, he didn't use it, but it did convince the
15 Supreme Court of the need to consider these different
16 valuation techniques.
17 MR. BAYLISS: So, the post-trial opinion comes out
18 in February of 1981. Was the decision to appeal automatic or
19 was there deliberation within the Prickett firm about what to
20 do and how to approach the situation? #00:05:32#
21 MR. HANRAHAN: I don't recall a lot of deliberation.
22 Bill Prickett decided he was going to appeal, and you know
23 Bill was always very determined in his approach to litigation

1 and, you know, he would not give up easily. So... and he was
2 convinced that they had a good case.
3 MR. BAYLISS: The appeal goes forward, and then the
4 post-trial opinion gets affirmed by a majority, and there is
5 one dissent. But it is an affirmance. At that point, did you
6 believe that the case was over? #00:06:16#
7 MR. HANRAHAN: Not if you were Bill Prickett you
8 didn't. He had Justice Duffy had dissented on both as to the
9 Lehman Brothers issue and as to burden of proof. He believed
10 that the Chancellor had put the burden on the plaintiffs, and
11 it should have been on the defendants. So, but there was a
12 practical problem that, even though it was an opinion by three
13 out of the five Justices, Justice Horsey and Chief Justice
14 Herrmann had filed notices of disqualification, which meant
15 they weren't available, so the opinion of the three Justices
16 was considered a decision en banc. And so, the only recourse
17 was a motion for reargument that initially would be in front
18 of the same three Justices that had just rendered the opinion.
19 MR. BAYLISS: It seems incredible because the Court
20 of Chancery has cut down the class from five million to one
21 hundred and forty-some thousand shares. It has dismissed the
22 case once with leave to replead. The case gets tried and
23 results in a decision for the defendants. It then gets
24 affirmed on appeal by the only judges that are available to

1 hear the appeal and, yet, there is a petition for rehearing.
2 And, then, something incredible happens. It's, I think, the
3 biggest comeback victory in Delaware jurisprudence. What was
4 Mr. Prickett thinking that got him confident that a petition
5 for rehearing in front of the same judges would work?
6 #00:08:18#
7 MR. HANRAHAN: I don't know that Bill was confident.
8 Bill used to say, "What's the fastest thing in the judicial
9 system? The denial of a motion for reargument." So, I don't
10 know that he had—but he had come that far, and he was going to
11 – and he had one Justice that had gone his way. So, it's could
12 you change the mind of one Justice? So, he proceeds, and you
13 then have an unusual sequence of events that occurs.
14 MR. BAYLISS: I want to ask you about that, and
15 particularly, want to ask about the dismissal of Lehman
16 Brothers because it seems as if the plaintiff decides to
17 dismiss Lehman Brothers to reconstitute the Court? Is that
18 what happened? #00:09:17#
19 MR. HANRAHAN: Well, it was certainly to remove the
20 conflict for the Chief Justice whose son was a partner in one
21 of the firms representing the defendants. The plaintiff had
22 said that was okay, but the defendants did not waive that
23 disqualification. And so, then a sequence of events happens.
24 Justice Duffy, the one Justice that had gone plaintiff's way,

1 retired on March 31, 1982. So, now he is gone, but Justice
2 Moore gets appointed in May of 1982. Then, Bill filed this
3 motion to dismiss Lehman Brothers and it was very explicit
4 that he was doing this to eliminate the conflict on behalf of
5 the Chief Justice and, ultimately, the Chief Justice on June
6 15, 1982, withdrew his disqualification.That was only eight
7 days before the matter was reargued. Meanwhile, Justice
8 Horsey's basis for disqualification had also cleared. So, now,
9 you had a hearing in front of five Justices. Justice Quillen
10 and Justice McNeilly, who were on the initial panel and, then,
11 three Justices, including the Chief Justice and Justice Horsey
12 and Justice Moore, who had not previously heard the case. So,
13 the hope there was, well, maybe we can convince the three new
14 Justices to reverse.
15 MR. BAYLISS: The oral argument before the
16 reconstituted Court includes a colloquy about the Arledge and
17 Chitea report and it turns out to feature critically in the
18 outcome. What happened? #00:11:40#
19 MR. HANRAHAN: Well, as often happens on appeal,
20 things that may have been in the record and discussed, but you
21 know, in a trial situation, there are a lot of issues and lot
22 of different things get – there came to be more of a focus on
23 the Arledge Chitea report, and it was discussed a good bit at
24 the argument. Then, subsequent to that, Bob Payson sent a

1 letter to the Supreme Court, on behalf of Signal, basically
2 arguing as to when the Arledge Chitea report had been known to
3 various directors. That, then, prompted a responsive letter,
4 but Bill Prickett happened to be out of the country at the
5 time, so it really was John Small who headed up that effort.
6 And we went back and, from the documents and transcripts, put
7 together the chronology and submitted that, and it was only at
8 that point that the matter was considered to have been
9 submitted to the Court.

10 MR. BAYLISS: Do you recall whether you and John
11 Small submitted that with input from Mr. Prickett or was he
12 completely unavailable and, therefore, you are left to submit
13 this critical letter back to the Supreme Court? #00:13:29#

14 MR. HANRAHAN: Well, back in those days, no email,
15 no cellphones. And Bill, I don't recall specifically where he
16 was, but Bill would go on treks in the Himalayas, and then he
17 went on another trek out in Outer Mongolia. So, my
18 recollection is Bill was someplace where basically you
19 couldn't communicate with him. So, we got this letter and
20 there needed to be a response, and so, we just had to do the
21 best we could in terms of reviewing the record and being able
22 to respond to what the defendants had put in.

23 MR. BAYLISS: So, at this point, there is just an
24 incredible amount of work that has gone into this case over

1 years of litigation. How was Prickett financing the case?
2 #00:14:27#
3 MR. HANRAHAN: Well, first of all, back in those
4 days, the cost of financing a contingent case was not that
5 great. I don't know what Ken Bodenstein's fees were then, but
6 I suspect they were a fraction of what a comparable expert
7 would charge now. The other thing is, is that the firm had a
8 fairly broad-based practice, much of which was hourly rate
9 work in the corporate area, insurance defense and other tort
10 defense, real estate, and commercial matters. So, there were
11 revenues coming in. And Bill had also started to do a number
12 of contingent cases, and some of those turned out well. So it
13 really was sort of self-financed, but at a level that is far
14 different than the sort of hundreds of thousands in expert
15 fees and other costs that you would have in today's
16 litigation.
17 MR. BAYLISS: Fast forward now to the opinion from
18 the reconstituted Supreme Court. It is totally different than
19 the Supreme Court opinion affirming the trial court just a
20 little while before. And the tone of the opinion is totally
21 different. To what do you attribute that? #00:16:10#
22 MR. HANRAHAN: Well, you had three new Justices,
23 including Justice Moore, who wrote the opinion, and he
24 obviously took a different view of things. I think the

1 interesting question is that Justice McNeilly and Justice
2 Quillen, who had come out the other way, joined in the
3 opinion, and it was five-zero. That was a surprise. There may
4 be things in the opinion that may have been intended to win
5 over, say, Justice Quillen, who I think very much believed
6 that appraisals should be at least the primary remedy. And
7 there is language in the opinion that says oh, we're returning
8 to the rule that appraisal will be the primary remedy. So, I
9 don't have specific information as to how the Court reached
10 its opinion.
11 MR. BAYLISS: What do you recall about the
12 presentation of evidence in the damages trial, if anything?
13 #00:17:21#
14 MR. HANRAHAN: I remember that the first thing the
15 Chancellor said was, "Gentlemen, why are we here?" And Bill
16 Prickett's response was, "Money, Your Honor." And Bill had a
17 way of getting to the point. It was largely a somewhat
18 expanded version of the damages case in the original trial.
19 You had Ken Bodenstein there with discounted cash flow
20 analysis and other analyses, and you had the defendants had –
21 obviously, they didn't rely on the Delaware Block approach
22 because the Supreme Court had kind of indicated well, you're
23 going to have to consider these other methods. And what they
24 set about doing was trying to show that the discounted cash

1 flow method was speculative and, with respect to rescissory
2 damages, that that was also speculative; there had been
3 intervening events, and so on. And so, you know, their
4 approach was largely to say there are no damages here. And you
5 got a significant, as often has proved to be the case in
6 valuation issues in cases, the judges still lament, as
7 Chancellor Brown did then, that there was this big gap between
8 the plaintiff's expert and the defendants' expert as to what
9 the value was. The defendants actually tried to show that if
10 you had gotten a greater sum earlier on, at the time of the
11 merger, and you considered what you might have earned on that,
12 that, actually, there were no damages. You know, you had
13 gotten more than what you— and I think the Chancellor went
14 through these different theories, decided no rescissory
15 damages. Then, in terms of compensatory damages, kind of said,
16 well, this kind of cash flow is too speculative and, really,
17 then, kind of said, "Okay. Well, what am I going to do here?"
18 And he believed that there ought to be some award because the
19 Supreme Court had found misconduct. Though, he really focused
20 on the Supreme Court's opinion as if it was only about
21 disclosure – only about disclosure of the Arledge Chitea
22 report -- and didn't really weigh as much the other, what we'd
23 call now unfair process elements in terms of timing,
24 initiation, structure, board approval. And so, I think he felt

1 like a dollar per share was a decent award given the
2 circumstances. But I think Bill Prickett thought he got short-
3 changed a little bit on that.
4 MR. BAYLISS: Right. Was he disappointed?
5 #00:21:02#
6 MR. HANRAHAN: Yes. And you can see that in Vice
7 Chancellor Berger's opinion, subsequently, on attorneys' fees.
8 Bill tried every way he could to increase the award. He asked
9 that Signal should have to pay the attorneys' fees rather than
10 having them paid out of the fund. He wanted all litigation
11 costs paid by the defendants. He got court costs and expert
12 fees, but not the others. And there was a dispute over whether
13 it should be compound interest, and he didn't prevail on that.
14 And, at the end of her opinion, Vice Chancellor Berger says,
15 "Well, let me make it clear; I am not faulting the plaintiff
16 for trying to increase the recovery." But, I think an element
17 of that was that Bill felt that at the end of the day that it
18 really wasn't enough. And some of it was, even with an
19 expanded class, it was a small class. It was 5.6-million
20 shares. Oftentimes, you see classes these days where there may
21 be a hundred million shares. A dollar a share would be a whole
22 lot of money. But, because of the small class and, what could
23 be viewed as a somewhat nominal award, the ultimate financial
24 outcome was not as good as Bill had hoped.

1 MR. BAYLISS: And then there is another appeal.
2 #00:22:48#
3 MR. HANRAHAN: Yeah.
4 MR. BAYLISS: And a motion by the defendants to
5 affirm, which gets granted. #00:22:57#
6 MR. HANRAHAN: Yeah.
7 MR. BAYLISS: The case doesn't end until then, it
8 seems. #00:23:00#
9 MR. HANRAHAN: Yeah. And you know, it was almost
10 like the Supreme Court was, boy, you've had – you've taken up
11 a lot of our time, and we sent it back down, and you got a
12 judgement, and enough is enough. And so, that was
13 disappointing but not really unexpected.
14 MR. BAYLISS: We touched on it briefly but didn't
15 explore how much the opinion changed the law, and what the
16 reaction was in the legal community. What is your recollection
17 of that? #00:23:43#
18 MR. HANRAHAN: Well, there were a number of
19 reactions. I mean any time stockholders win a prominent case,
20 there is a lot of oh, it's the end of the world, and it's
21 going to be terrible. But there was also a reaction to
22 Weinberger because of the emphasis on appraisal being the
23 exclusive remedy where there was sentiment that said, "Oh, in
24 light of Weinberger, class actions challenging mergers are

1 dead," which did not prove to be the case, but it was a major
2 issue a few years later in Rabkin, and that was – and Vice
3 Chancellor Berger decided, yeah, appraisal was basically the
4 remedy. The Supreme Court then reversed that and made it clear
5 that no class actions were still going to exist. And so, that
6 was, you know, one of the ways where people see in an opinion
7 what they want to see.

8 MR. BAYLISS: There is a discussion in the Delaware
9 Supreme Court's opinion about special committees. Was that
10 something that seemed new at the time, or...? #00:25:06#

11 MR. HANRAHAN: And I think it wasn't – I think they
12 said a committee of disinterested directors, and it was in the
13 context of there being a substitute for arms-length
14 negotiation. The fundamental problem was that Signal was on
15 both sides of the transaction. They controlled UOP. They
16 controlled the UOP Board. Now, they did have a majority of the
17 minority stockholder vote, but, in the entire fairness
18 context, the Supreme Court was saying, "Well, you have to look
19 at it. Was this really an outcome that you would have had if
20 you had an independent negotiating entity?" And that continues
21 to be an issue to this day. And we have, you know, the idea
22 that independent committee plus majority of minority changes
23 the standard. And that's, all these years later, those kinds
24 of issues are still playing out.

1 MR. BAYLISS: You and Bill Prickett wrote a law
2 review article after the issuance of the Weinberger opinion.
3 So it still wasn't over, at least as a matter of debate and as
4 a matter of application to future cases. Was that something
5 that was typical? #00:26:44#
6 MR. HANRAHAN: No. But, you know, there were
7 articles being written, and some of them were death of the
8 class action and what have you, and I think Bill wanted to
9 have a response to it. And rarely did people ask for his side
10 of it. He used to comment that, "Oh yeah, I won this case and
11 then Gil Sparks and Bob Payson go out and speak at seminars
12 and say what it means." So, it was an opportunity for him to
13 express his views. And so, we together wrote an article. And
14 one of the things for me that was interesting about it was
15 just analyzing the Supreme Court's opinion and seeing how much
16 was in there. There just was an awful lot – some of it
17 affirming prior law or clarifying prior law, and some of it
18 was new, but I don't think it was a total revolution. It built
19 on a lot of concepts like entire fairness that had been around
20 since Sterling v. Mayflower.
21 MR. BAYLISS: One of the issues that comes out in
22 the Supreme Court opinion and then gets addressed in your law
23 review article is this question of the impact of a fully
24 informed stockholder vote. And it's described in the law

1 review article as presenting a plaintiff with a chicken and
2 egg problem because, if a fully informed vote cleanses, then
3 there is this question of how do you prove that the vote
4 wasn't fully informed before you get discovery? That seems to
5 be a question that we are confronting again today based on
6 Corwin. What was your view at the time and what is it now?
7 #00:28:49#
8 MR. HANRAHAN: Well, one of the things you have to
9 remember is, back in that era, there was much less information
10 available. And so, it was particularly problematic to look at
11 a proxy statement, and the proxy statements back then were
12 much less informative than they are now. And this idea that
13 you're supposed to identify what's missing or whether a
14 statement is accurate or not. Well, one of the differences in
15 stockholder litigation – it's one of the things that's always
16 made it fascinating to me – you weren't there at the board
17 meeting or during the negotiations and, so, you don't have any
18 firsthand knowledge of what went on. So, trying to pinpoint
19 whether this statement is accurate or whether there is
20 something missing is a very difficult task. On the one hand,
21 it's become somewhat easier in that there is much more
22 publicly available information that you can analyze. But on
23 the other hand, the standard that the Court imposes, I think,
24 has gotten higher over time. And you almost sometimes, with

1 doctrines like oh, self-flagellation isn't required, well, it
2 almost creates an incentive to say, well, let's not disclose
3 that because if we get rid of the case on a motion to dismiss,
4 nobody will ever know. And that's not a happy result. And as
5 you point out, it's an issue that still exists today. And
6 there are a number of times where discovery may have gone
7 forward on some other basis or whatever, and then you find the
8 meaty disclosure violations. So, it remains a challenge, and I
9 think you just have to look at as much information as you can
10 get from, not just the proxy statement, but prior SEC filings,
11 whatever else is out there in the public domain, and then try
12 to come up with specific disclosure violations in the context
13 of that case, as opposed to what some folks would do is just,
14 oh, there's like a standard litany of things that they didn't
15 disclose, that the investment banker did this or that, and the
16 Court doesn't have a lot of patience with that.
17 MR. BAYLISS: Now, there is an increasing tendency
18 to use books and records demands to gather information that
19 can be used to pierce the disclosures. Back at the time
20 Weinberger was decided and when you all were confronting the
21 chicken and the egg problem, was there any move towards using
22 books and records to try to gather information pre-suit?
23 #00:32:16#

1 MR. HANRAHAN: Well, books and records has evolved
2 over time as well. You had this concept of you had to identify
3 the documents with rifle precision and what have you. And, of
4 course, back then, there were many fewer documents. And
5 getting board minutes doesn't necessarily help you because the
6 board minutes are usually drafted by lawyers. They go through
7 drafts, and they're sort of sanitized. And so, you may not get
8 helpful information. Also, I think there has been a shift
9 because, it used to be, if you want relief, you got to go get
10 expedited proceedings, get discovery, and bring on a
11 preliminary injunction. I think the use of 220 has expanded as
12 the Court has gotten more reluctant to allow expedited
13 proceedings. And, as the focus has sort of shifted from
14 preliminary injunction proceedings to post-transaction damages
15 proceedings. So now, you're seeking to put yourself in a
16 position, and you are able to get into position because you
17 can get more documents in a 220 case now. I think another
18 factor on the use of 220 is the idea that oh, well, the
19 defendants can use any documents produced in a 220 in support
20 of a motion to dismiss. And that creates a practical problem
21 too because you usually try to negotiate a resolution of a 220
22 proceeding, but the defendants know what documents there are.
23 You don't. And so, they can say, "Oh yeah, well, we will
24 produce these documents when... ." Yeah, they're producing the

1 documents that will support their motion to dismiss, but you
2 don't know that you're getting the documents, you know, the
3 email that will show that what was said at the board meeting
4 was kind of a pretext, or something like that. So, these are
5 issues that kind of evolve over time, and the courts deal with
6 them as circumstances change, and also the parties have to
7 deal with them as circumstances change. Back in the Weinberger
8 v. UOP era, document discovery might have consisted of one or
9 two boxes of documents – and they were paper documents. There
10 were no electronic documents, which are probably the most
11 valuable resource in any kind of stockholder litigation now.
12 MR. BAYLISS: The article also discusses appraisal
13 and, specifically, there is a statement that appraisal, even
14 with Weinberger's liberalized valuation standards, remains an
15 essentially unworkable and expensive remedy for an aggrieved
16 minority stockholder who has cashed out of a corporate
17 enterprise. That seems to be the same debate that we're having
18 today. #00:36:02#
19 MR. HANRAHAN: Well, in terms of small minority
20 stockholders, it's not even a debate anymore because the
21 statute has been amended and they effectively don't have
22 appraisal rights any more. And so, it's only if you meet
23 certain financial criteria or percentage criteria, that you
24 really have standing to bring an appraisal action. If you're a

1 small holder, you just have to hope that somebody who does
2 meet the criteria brings an appraisal action. The problem with
3 appraisal was the same as you mentioned, oh, and the class was
4 cut down to 140,000 shares in Weinberger, and it becomes
5 financially unviable to maintain that action, particularly
6 nowadays, where financial experts run into the hundreds of
7 thousands, and sometimes even more than a million dollars, and
8 unless you have a very substantial economic stake, the
9 litigation becomes really financially unworkable from the
10 stockholder side. And that's why you'd have funds who may have
11 held a significant position, why you'd have these so-called
12 appraisal arbitrage because it really is a matter of saying,
13 in order to make this financially viable, you have to have a
14 certain level. And now, of course, there are various ways that
15 that's being discouraged. And, I think, we may be going back
16 into a period where appraisal's no longer really a viable
17 remedy.
18 MR. BAYLISS: Looking back on Weinberger now, can
19 you pinpoint the moment when you realized this is a big case
20 and I'm working on one of the great Delaware corporate law
21 decisions? #00:38:20#
22 MR. HANRAHAN: Well, I think after the Supreme
23 Court's opinion, it was obvious that this was going to be a
24 significant case. There may have been debate over what it was

1 going to ultimately mean, but I think there was a recognition
2 right off, not just by my firm, but I think a lot of other
3 folks, that this was going to be an important case. And then,
4 through the years, and we're now a lot of years after
5 Weinberger, it has remained one of the central cases in
6 Delaware law. And you still have complaints that are largely
7 framed by Weinberger. You know, the idea of having a
8 controlling stockholder and being able to have entire fairness
9 apply; it's always a key consideration in any case. You know,
10 looking at the process as a whole and having good arguments as
11 to why the process was flawed, that's been very important as
12 well. And then, there have been other things that try to make
13 it easier to accomplish such a transaction. You know, if you
14 remember Signal acquired a majority position, and then waited
15 a while, and then did the freeze-out merger, you know. Well,
16 there have been various methods that, either through statute
17 or through top-up options, or whatever, where you basically
18 sort of eliminate that second-step challenge, or at least make
19 it very difficult to do. And so, somebody acquires – they can
20 acquire 51-percent in a tender offer -- but then, you know,
21 have a top-up option that lets—or you don't let have to hold a
22 meeting to do the second step, and so, it happens quickly, and
23 not really an opportunity to challenge it. So, you know, I
24 think you, again, the process just continues on. There are new

1 statutory provisions, new case law developments, and, from the
2 stockholder side, you just have to adjust to those and figure
3 out what works. And, interestingly enough, there are still
4 good cases.
5 MR. BAYLISS: Thank you very much, Mike. I
6 appreciate you spending the time today. #00:41:14#
7 MR. HANRAHAN: I appreciate it. Thanks very
8 much.
9 #00:41:20#
10 **###**