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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

ALDEN SMITH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 6342
	)	
JAY A. PRITZKER, ROBERT A.	)	
PRITZKER, JEROME W. VAN	)	
GORKOM, BRUCE S. CHELBERG,	)	
WILLIAM B. JOHNSON, JOSEPH	)	
B. LANTERMAN, GRAHAM J.	)	
MORGAN, THOMAS P. O'BOYLE,	)	
ROBERT W. RENEKER, W. ALLEN	)	
WALLIS, TRANS UNION CORPORA-	)	
TION, a Delaware corporation,	)	
THE MARMON GROUP, INC., a	)	
Delaware corporation, GL	)	
CORPORATION, a Delaware	)	
corporation, and NEW T CO.,	)	
a Delaware corporation,	)	
	)	
Defendants.	)	

C O M P L A I N T

1. This action is brought to enjoin and prevent continuing and threatened violations of Delaware law by the defendants in connection with the proposed issuance of 1,000,000 shares of common stock of defendant, Trans Union Corporation ("TUC"), a Delaware corporation, and the proposed merger of New T Co. ("NTC"), a Delaware corporation into TUC.

A. THE PARTIES

2. Since before the time of the transactions complained of and continuously to the present time, plaintiff, Alden Smith ("Smith"), has been the record and beneficial owner of approximately 54,000 shares of common stock of TUC.

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3. TUC is a Delaware corporation with its principal executive offices located at 90 Half Day Road, Lincolnshire, Illinois 60015. TUC common stock (\$1.00 par value) is registered and traded on the New York Stock Exchange. As of December 31, 1979, 12,407,152 shares of TUC common stock were issued and outstanding.

4. Defendant, The Marmon Group, Inc. ("Marmon"), is a Delaware corporation with its principal executive offices located at 39 South LaSalle Street, Chicago, Illinois 60603. Marmon preferred stock, which is voted with Marmon common stock, is publicly held and traded on the American Stock Exchange. Marmon preferred stock represents 18% of the voting interest in Marmon. As of December 31, 1979, 5,000,000 shares of Marmon common stock were outstanding, representing approximately 82% of the voting interest in Marmon. All of these shares of common stock are owned by defendant, GL Corporation ("GL").

5. Defendant, GL, a Delaware corporation, is a private investment company, all of the voting stock of which is owned directly, indirectly or beneficially by members of the Pritzker family of Chicago, Illinois.

6. The registered agent for service of process in Delaware for TUC, Marmon and GL is The Corporation Trust Company, 100 West 10th Street, Wilmington, Delaware 19801.

7. Defendant, NTC, is a Delaware corporation which is an indirect, wholly-owned subsidiary of GL. NTC was established for the sole purpose of implementing the merger complained of hereafter. Defendant NTC's registered agent for service of process in Delaware is United States Corporation Company, 306 South State Street, Dover, Delaware 19901.

8. Defendant, Jerome W. Van Gorkom ("Van Gorkom"), is Chairman of the Board of Directors and Chief Executive Officer of TUC. Defendants, Bruce S. Chelberg ("Chelberg"), William B. Johnson ("Johnson"), Joseph B. Lanterman ("Lanterman"), Graham J. Morgan ("Morgan"), Thomas P. O'Boyle ("O'Boyle"), Robert W. Reneker ("Reneker"), and W. Allen Wallis ("Wallis"), are all members of the Board of Directors of defendant TUC. Defendant Chelberg is also President and Chief Operating Officer of defendant TUC. Defendant O'Boyle is also Senior Vice President - Administration of defendant TUC. By virtue of their positions, each of these individual defendants owes fiduciary duties to TUC and its stockholders, including plaintiff.

9. Defendant, Jay A. Pritzker, is Chairman of the Board of Directors of defendant Marmon. Defendant, Robert A. Pritzker, is President, Treasurer and a director of defendant Marmon ("the Pritzkers").

B. CLASS ACTION AND DERIVATIVE ALLEGATIONS

10. Plaintiff brings and prosecutes this action pursuant to Chancery Court Rule 23 as a class action for himself and as representative of and for and on behalf of all other persons similarly situated, namely, all persons, other than the named defendants in this action, who were the record owners of common stock of TUC prior to September 22, 1980, the date of the announcement of the proposed merger which is the subject of this action (the "Public Stockholders").

11. The class represented by Smith is composed of numerous persons who reside in various communities throughout the country and the joinder of all of these persons or

even a majority of them would be impracticable.

12. There are questions of law and fact which are common to the class. The questions of law and fact which control Smith's claims against the defendants are identical to those which will be dispositive of the claims of members of the class. Specifically, without limitation, these questions include whether the officers and directors of TUC who are charged with the responsibilities of conducting corporate affairs violated their fiduciary duties to TUC and the Public Stockholders; whether the result of the proposed merger would be to deteriorate substantially the worth of TUC; whether the effect of the merger would be to eliminate Public Stockholders of TUC; whether the defendants have seized corporate opportunities of TUC and wasted the assets of TUC as more specifically alleged, infra.

13. The claims of Smith are typical of those of the class. The claims of each member of the class arise out of the same facts which constitute the unlawful conduct of the defendants.

14. Smith will fairly and adequately protect the interests of the class. Because his claims are typical of, and based upon, the same facts as the claims of the class, Smith will establish the facts to support the claims and will diligently prosecute this action.

15. Defendants in this action have violated their fiduciary duties to the class of Public Stockholders represented in this action, thereby making appropriate final injunctive relief with respect to the class as a whole.

Because of the unfairness of the proposed merger to the plaintiff class, preliminary and final injunctive relief against consummation of the merger is appropriate.

16. Plaintiff also brings this action derivatively in the right and for the benefit of TUC, pursuant to Chancery Rule 23.1.

17. Plaintiff has made no demand upon the Board of Directors of TUC to bring this action. Any such demand would be futile because all of the members of TUC's Board of Directors have participated in, authorized, approved and acquiesced in the scheme and plan complained of herein. All of the members of the Board of Directors of TUC are defendants in this action. They have taken no steps to prevent or redress any of the wrongs complained of herein. Thus, each of said defendants is personally liable for said wrongs.

#### C. THE PROPOSED TRANSACTION

18. On September 25, 1980, TUC filed with the Securities and Exchange Commission its Form 8-K, dated September 20, 1980. That document provided, in part, that pursuant to an Agreement and Plan of Merger, dated September 20, 1980, TUC had agreed to merge with an affiliate of The Marmon Group, Inc. ("Marmon").

19. A press release issued September 22, 1980, was included in the TUC Form 8-K. It provided that pursuant to the merger each TUC holder of common stock would receive \$55 cash for each TUC share. The press release stated that the merger was to be subject to approval of the stockholders of TUC at a special meeting scheduled for some time during December, 1980, or early January, 1981.

20. The TUC press release included in the Form 8-K stated that until October 10, 1980, the "purchaser" of the TUC shares pursuant to the merger had the right to terminate the merger if satisfactory financing had not been obtained. The release also advised that in a related transaction, TUC had agreed to sell to a designee of the "purchaser" 1,000,000 newly-issued shares of TUC common stock for \$38 cash per share, to be issued only in the event that merger financing was committed no later than October 10, 1980.

21. On October 14, 1980, Marmon filed with the Securities and Exchange Commission its Form 8-K, dated October 10, 1980. It disclosed, inter alia:

(a) On October 7, 1980, Marmon executed a \$150,000,000 Credit Agreement with Continental Illinois Corporation and Citibank, N.A., the terms of which were substantially similar to the terms of a prior credit agreement in the same amount dated December 19, 1979.

(b) On October 9, 1980, the Board of Directors of Marmon and the Conflict Transaction Committee of that Board approved the terms of a loan in the amount of \$200,000,000 to be made by Marmon to GL. As previously stated, GL is the holder of 100 percent of the issued and outstanding common stock of Marmon. No mention was made of the 18 percent voting interest in Marmon attributable to Marmon preferred stock. The proceeds for the \$200,000,000 loan were to be obtained by Marmon from, among other sources, a take down of \$150,000,000 pursuant to the October 7, 1980 Credit Agreement with Continental Illinois and Citibank. Consummation of the

loan to GL is conditioned upon the completion of a proposed merger with TUC by an unidentified GL affiliate.

(c) On October 8, 1980, GL agreed to pledge all its common stock of Marmon to various lenders as partial security for a \$450,000,000 term loan to be made to an affiliate of GL (other than Marmon) in connection with the affiliate's acquisition, through merger, of all of the common stock of TUC. The pledge of the stock was to be released when the principal balance of the \$450,000,000 term loan was reduced by \$150,000,000. The acquisition of TUC was to remain subject to the approval of TUC shareholders.

22. On October 1, 1980, Canadian Imperial Bank of Commerce Trust Company (Bahamas) Limited, as Trustee of Settlement T-1740 ("Trustee"), filed with the Securities and Exchange Commission its Schedule 13D relating to the common stock of TUC. Pertinent disclosures in that document included:

(a) The Trustee acts as Trustee under a Settlement which created approximately forty (40) separate, distinct, irrevocable and non-reversionary trusts. The beneficiaries of these trusts are members of the Pritzker family of Chicago. The "Pritzker family" is composed of lineal descendants of Nicholas J. Pritzker, deceased, and includes Jay A. and Robert A. Pritzker. The registered office of these offshore trusts is P. O. Box N3933, Nassau, The Bahamas.

(b) The Trustee intends to purchase 1,000,000 shares of common stock of TUC, subject to negotiation and finalization of definitive agreements between the

Trustee and GL.

(c) As of September 20, 1980, the trusts owned 110,266 shares of the common stock of TUC. The aggregate purchase price of the 1,000,000 additional shares of TUC was to be \$38,000,000. To the extent liquid assets of the trusts were not sufficient to effect the purchase, the Trustee intends to borrow from other Pritzker family trusts, from other entities controlled by the Pritzker family or from lending institutions.

(d) On September 20, 1980, GL, which is owned by Pritzker family trusts, proposed a merger of a wholly-owned indirect subsidiary of GL into TUC. TUC accepted the proposal on September 21, 1980, and NTC and TUC entered into an Agreement and Plan of Merger. Item 4 of the Schedule 13D stated that "as an integral part of, and inducement for, the merger proposal," TUC, "at the request of GL, agreed to sell to GL or a designee of GL, and GL agreed to purchase, for itself or a designee, 1,000,000 newly issued shares of common stock of TUC at \$38."

(e) Pursuant to the merger agreement, each TUC stockholder will be merged out for \$55 in cash per share of TUC common stock held as of the effective date of the merger. Upon consummation of the merger, TUC would become a wholly-owned, indirect subsidiary of GL. Thereupon, the common stock of TUC would be delisted from the New York Stock Exchange.

(f) The Trustee stated its intention to vote all shares of common stock owned by the Trusts in favor of



the proposed merger. Upon consummation of the purchase of the additional shares, the total of 1,110,226 shares of common stock of TUC owned by the trusts would represent approximately 8.2 percent of the total of shares outstanding. The Trustee would have sole voting power with respect to the shares.

(g) The Agreement and Plan of Merger establishes the following manner and basis of exchanging or converting shares of the Constituent Corporations:

(i) Each share of TUC common stock issued and outstanding immediately prior to the effective time of the merger (other than shares held by NTC) are to be exchanged for \$55 cash. This would include the 1,000,000 shares to be issued to the Trustee at \$38 per share.

(ii) Each share of TUC common stock held by NTC (which would exclude the shares purchased by the Trustee) immediately prior to the effective time of the merger is to be cancelled.

(iii) Each share of NTC common stock outstanding at the effective time of the merger would be converted into one share of TUC common stock which would constitute the only issued and outstanding equity securities of TUC.

(h) TUC, the surviving corporation, would, after the merger, be liable for all debts, liabilities and duties of both NTC and TUC. This will include the \$450,000,000 loaned to NTC by banks as well as the \$200,000,000 to be loaned to GL by Marmon.

D. CLAIMS FOR RELIEF

COUNT I

BREACH OF FIDUCIARY DUTY

23. Plaintiff realleges paragraphs 1 through 22, above.

24. The defendant officers and directors of TUC, by agreeing to the proposed plan of merger and by undertaking to consummate the merger, are in breach of their fiduciary duty of honesty, loyalty, good faith and fairness to TUC and the Public Stockholders.

(a) The defendant officers and directors of TUC have agreed to a proposed plan of merger whereby they will be able to accelerate the exercise of certain option rights in TUC stock which they possess. The exercise of these rights will inure to their personal benefit and to the detriment of the TUC treasury and dilute the interests of the Public Stockholders.

(b) The defendant officers and directors of TUC have not made an adequate effort to determine the availability of other potential merger partners for TUC who could offer terms more beneficial to TUC and the Public Stockholders. TUC's officers and directors have not made a diligent effort to obtain a merger on the basis of a tax-free exchange of stock which would not have the discriminatory tax impact described below.

(c) The defendant officers and directors of TUC have breached their fiduciary duty to TUC and the Public Stockholders by agreeing to issue to the Pritzker Trust for inadequate consideration 1,000,000 additional

shares of the common stock of TUC to insure a favorable vote on the proposed merger by diminishing the voting power of current Public Stockholders.

(d) The defendant officers and directors of TUC have breached their fiduciary duty to TUC and the Public Stockholders by failing to carry out their obligation to obtain the requisite information pertinent to the proposed transaction and failed to weigh and consider carefully the proposed transaction and thus exercise their duty to give TUC and the Public Stockholders the benefit of their considered judgment on the proposed transaction.

(e) The defendant officers and directors of TUC breached their fiduciary obligation to TUC and the Public Stockholders by assenting to a proposed transaction that is not in the best interests of TUC and its Public Stockholders and, on the contrary, is designed to further the best economic interest and advantage of third parties, i.e., the Pritzkers.

#### COUNT II

THE PROPOSED MERGER IS CONTRARY TO  
THE BEST INTERESTS OF TUC AND ITS  
PUBLIC STOCKHOLDERS

25. Plaintiff realleges paragraphs 1 through 22, above.

26. The defendant officers and directors of TUC have breached their fiduciary duties to TUC and the Public Stockholders by proposing and promoting the proposed merger.

(a) NTC, the vehicle by which the merger is to be effected, is a shell corporation organized for the sole purpose of consummating the merger. It would bring no additional assets to TUC as a result of the merger. However, if the merger is consummated, TUC will assume the debts of NTC in an amount in excess of \$688,000,000. Thus, the credit of TUC is being used to finance the entire merger; but TUC would receive no additional assets.

(b) The effect of the proposed merger would be to eliminate the Public Stockholders and place TUC completely under the control of the Pritzker family. Although TUC would be liable for the debts of NTC after the merger, Pritzker entities could take advantage of the investment tax credits of TUC.

(c) There is no justification for the issuance by TUC of 1,000,000 additional shares of TUC common stock to the Pritzker Trusts. The effect of the issuance of the shares will shift additional voting power to the defendants who favor the proposed merger. The issuance of the shares would unfairly and unjustly dilute the voting power of the Public Stockholders.

(d) The \$55 per share to be received by the Public Stockholders in a taxable transaction does not constitute fair value for their investment in TUC.

### COUNT III

#### WASTE OF CORPORATE ASSETS

27. Plaintiff realleges paragraphs 1 through 22, above.

28. The issuance of 1,000,000 additional shares of TUC common stock to the Pritzker Trusts would constitute a waste of corporate assets of TUC.

(a) The issuance of the shares would result in an unjustified payment of \$17,000,000 by TUC. The 1,000,000 shares are to be sold to the Pritzker Trusts at \$38 per share, and immediately repurchased by TUC for \$55 per share. The proposed plan of merger that includes the foregoing squandering of \$17,000,000 by TUC was adopted by the Board of TUC.

(b) The Board, by endorsing a purchase price of \$55 per share, has recognized that \$38 is inadequate consideration for the 1,000,000 shares to be sold to the Pritzker Trusts.

(c) The reason for the issuance of additional shares is to help insure a favorable vote on the merger proposal by placing 1,000,000 additional shares in the hands of the Trustee who has committed himself to voting those shares in favor of the proposed merger.

(d) The proposed merger itself would constitute a waste of the corporate assets of TUC. NTC is merely a shell corporation which will bring no assets to TUC as a result of the merger. TUC receives no benefit from the proposed transaction. On the contrary, as stated in the proposed plan of merger, TUC will assume all the debts of NTC which will amount to more than \$688,000,000.

#### COUNT IV

#### DISCRIMINATORY TAX TREATMENT

29. Plaintiff realleges paragraphs 1 through 22, above.

30. Many of the Public Stockholders of TUC common stock acquired their shares in connection with tax-free acquisitions by TUC. Therefore, many of the Public Stockholders, including plaintiff Smith, have a low basis in their stock for tax purposes. Consummation of the merger would be a taxable event. Therefore, many Public Stockholders would face substantial tax liability. However, if 1,000,000 additional shares of TUC common stock are issued to the Pritzker Trust, the repurchase of those shares by TUC pursuant to the proposed merger would inure to the benefit of the Pritzkers' Bahamian Trusts with no tax to the Trusts. Therefore, the tax treatment resulting from the proposed merger would be highly discriminatory against plaintiff and the Public Stockholders.

COUNT V

SELF-DEALING BY TUC DIRECTORS AND OFFICERS

31. Plaintiff realleges paragraphs 1 through 22, above.

32. Section 2.05 of the proposed plan of merger provides that, prior to the effective date of the merger, TUC shall purchase for an aggregate cost of not more than the difference between the option price and \$55 per share from the holders thereof all outstanding options to purchase stock and shall make arrangements satisfactory to NTC to extinguish all other rights to acquire TUC stock and shall terminate all plans permitting the granting of such options and similar rights. Therefore, by means of the consummation of the merger, the officers and directors of TUC will be

able to accelerate the exercise of their option rights to the detriment of the TUC treasury. This constitutes self-dealing by the officers and directors of TUC in violation of their fiduciary duties to TUC and the Public Stockholders.

COUNT VI

CONFLICT OF INTEREST

33. Plaintiff realleges paragraphs 1 through 22, above.

34. If the issuance of 1,000,000 additional shares to the Pritzker Trusts is allowed, Pritzker interests will stand on both sides of the proposed merger. The Trusts will be able to vote its newly-acquired shares in favor of the proposed merger which will benefit Pritzker-controlled companies to the detriment of TUC and the Public Stockholders.

COUNT VII

APPROPRIATION OF CORPORATE OPPORTUNITY

35. Plaintiff realleges paragraphs 1 through 22, above.

36. If the proposed merger is consummated, the credit of TUC will be used to benefit Pritzker interests, rather than the Public Stockholders. If TUC has sufficient credit to assume the \$688,000,000 in debt for which it will be responsible after consummation of the merger, that credit should be used to benefit the Public Stockholders rather than the Pritzker family.

COUNT VIII  
FRAUDULENT CONSPIRACY TO  
MANIPULATE CORPORATE MACHINERY

37. Plaintiff realleges paragraphs 1 through 22, above.

38. The defendant officers and directors of TUC and the Pritzkers have fraudulently conspired to manipulate the corporate machinery of TUC to enrich themselves at the expense of TUC and the Public Stockholders. As a result of the conspiracy to effect the merger, TUC officers and directors will be able to exercise their stock options while the Pritzkers will reap an automatic \$17,000,000 profit and will have the benefit of the investment tax credits of TUC. On the other hand, many Public Stockholders will be faced with enormous tax liabilities and TUC itself will be saddled with large new debt, arising solely out of the proposed transaction.

E. IRREPARABLE INJURY - NO REMEDY AT LAW

39. Unless enjoined, the issuance of 1,000,000 shares to the Pritzker Trusts could be effected at any time. This would cause immediate, serious and irreparable injury to the plaintiff class in that it would place in the hands of the Trustee, who is committed to vote in favor of the proposed merger, substantial voting power which it does not presently have. The issuance of these additional shares will allow the Pritzker Trusts to vote in favor of a proposed merger which would benefit the Pritzker Trusts, and thereby, the Pritzkers individually, but would cause TUC to assume



significant debts and liabilities of Pritzker-controlled companies and would result in the Public Stockholders being merged out on unfair terms.

40. Consummation of the proposed merger of NTC into TUC would eliminate the Public Stockholders. The proposed merger would result in discriminatory tax consequences for many of the Public Stockholders. The proposed merger does not meet the applicable standards of fairness to the Public Stockholders. The merger would constitute a waste of the corporate assets of TUC and would cause TUC to assume significant liabilities. By acting to effectuate the merger, the officers and directors of TUC are acting in violation of their fiduciary duties to the plaintiff class. Thus, to maintain the status quo among the parties and to prevent the consummation of a merger which is prejudicial to the interests of the Public Stockholders, the defendants and those acting on their behalf or at their direction should be preliminarily and permanently enjoined from undertaking any activity in furtherance of the consummation of the proposed merger.

41. The plaintiff class has no adequate remedy at law for the wrongs complained of in this action.

WHEREFORE, Smith, on his own behalf and on behalf of TUC and the Public Stockholders, prays:

(a) That this Court enjoin the issuance by TUC of any shares of TUC to the Pritzker Trusts or defendants.

(b) That this Court enjoin the defendants or any person acting on their behalf from taking any action to effectuate the consummation of the proposed merger of NTC into TUC.

(c) That, if there has been any issuance of additional shares of TUC to the Pritzker Trusts or to the defendants or there have been any actions looking to the effectuation of the consummation of the proposed merger of NTC into TUC, the Court issue an order rescinding said issuance of stock or said actions looking to the consummation of the proposed merger or, in the alternative, grant rescissionary relief or damages to the plaintiff and the plaintiff class.

(d) That, in the alternative, if any shares of TUC have been issued to the Pritzker Trusts or to the defendants, the Court issue an order prohibiting the voting of or otherwise sterilizing said shares of stock.

(e) That the Court issue an order certifying this as a class action and designating the plaintiff as the class representative.

(f) That, in the alternative, the Court grant the plaintiff and the plaintiff class compensatory damages.


(g) That the Court award the plaintiff's attorneys fees, costs and expenses.

(h) That the Court grant such other and further relief as this Court deems necessary and proper.

December 19, 1980

PRICKETT, JONES, ELLIOTT &  
KRISTOL

By

  
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