

Doc.

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

GROVER C. BROWN
VICE-CHANCELLOR

May 7, 1979

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Re: Weinberger v. UOP, Inc., et al
Civil Action No. 5642
Submitted: May 4, 1979

Gentlemen:

The plaintiff has applied for certification of an interlocutory appeal pursuant to Rule 42 of the Rules of the Delaware Supreme Court. Plaintiff seeks to appeal from an order of this Court dated April 26, 1979 dismissing the derivative counts of the complaint and also from an order of the same date which limited the class of persons to be represented by the plaintiff to a number less than the whole of the former stockholders of UOP, Inc. sought to be represented by the plaintiff.

Having considered the arguments and authorities presented by counsel, I deny the application and refuse to certify the interlocutory appeal. I do so for the following reasons.

First of all, as to the application to be permitted an appeal from the determination of the class to be represented by the plaintiff, I am not persuaded that my ruling has established a legal right in view of the fact that the Court retains the power to adjust the scope of a class up to the time of final judgment, at least as I understand it. The argument of the plaintiff that the excluded members will suffer loss of rights if they cannot be included in the class from the outset is unpersuasive. Under that rationale, every initial determination as to the scope of the class to be represented in a class action would meet the first half of the test for qualifying for an interlocutory appeal under Rule 42(b). No authority has been cited wherein an interlocutory appeal has been allowed from an initial determination as to the scope of the class. On the present record, to the extent that the plaintiff seeks to appeal from the order defining the scope of the class, I conclude that he has not satisfied the requirement of Rule 42(b)(i).

Secondly, as to his application to be permitted an appeal from the dismissal of the derivative claim, I fail to see where the decision implemented by the order of April 26, 1979 presents a question of law which is of the first instance in this State. The dismissal was granted on the authority of Delaware precedents which hold that

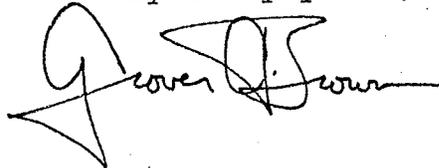
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the loss of status as a stockholder terminates the standing of a person to either bring or maintain a derivative action. The decision from which the interlocutory appeal is sought to be taken is therefore not in conflict with other opinions in this Court, and there is no question of law relating to a statute which has not been, but should be settled by the Supreme Court. Furthermore, the interlocutory order from which the appeal is sought to be taken has not sustained the controverted jurisdiction of this Court, nor has it vacated or opened a judgment of this Court, nor will a review of the interlocutory order terminate the litigation or otherwise serve considerations of justice.

Accordingly, this being the tenth legal day subsequent to which the application for the interlocutory appeal was filed, I hereby conclude, pursuant to Supreme Court Rule 42(c)(ii) that the criteria set forth in Rule 42(b) have not been met. Consequently, I deny plaintiff's application for certification.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in black ink, appearing to read "G. J. Jones", written over a horizontal line.

GCB:mlw

cc: Register in Chancery