

FILED

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REGISTER IN CHANCERY

JOHN D. KELLY III

Dec.

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

| | | |
|-------------------------------|---|-----------------------|
| WILLIAM B. WEINBERGER, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 5642 |
| |) | |
| UOP, INC., THE SIGNAL |) | |
| COMPANIES, INC., SIGCO |) | |
| INCORPORATED, LEHMAN BROTHERS |) | |
| KUHN LOEB, INC. CHARLES S. |) | |
| ARLEDGE, ANDREW J. CHITIEA, |) | |
| JAMES V. CRAWFORD, JAMES W. |) | |
| GLANVILLE, RICHARD A. LENON, |) | |
| JOHN O. LOGAN, FRANK J. |) | |
| PIZZITOLA, WILLIAM J. QUINN, |) | |
| FORREST N. SHUMWAY, ROBERT |) | |
| S. STEVENSON, MAYNARD P. |) | |
| VENEMA, WILLIAM E. WALKUP |) | |
| and HARRY H. WETZEL, |) | |
| |) | |
| Defendants. |) | |

NOTICE OF MOTION

To: R. Frank Balotti, Esquire
Richards, Layton & Finger
4072 DuPont Building
Wilmington, Delaware 19899

A. Gilchrist Sparks, III, Esquire
Morris, Nichols, Arsht & Tunnell
Wilmington Tower
Wilmington, Delaware 19899

Robert K. Payson, Esquire
Potter, Anderson & Corroon
350 Delaware Trust Building
Wilmington, Delaware 19899

PLEASE TAKE NOTICE that the attached motion for leave
to amend the complaint will be presented to Honorable Grover

Hand Served
9-6-79
Mr. Balotti
Mr. Sparks
Mr. Payson

C. Brown at 11:00 A.M. on Friday, September 7, 1979, or at such other time as shall be designated by the Court.

PRICKETT, SANDERS, JONES,
ELLIOTT & KRISTOL

By



William Prickett
1310 King Street
Wilmington, Delaware 19899
Attorney for Plaintiff

cc: Alan N. Halkett, Esquire
Latham & Watkins
555 South Flower Street
Los Angeles, California 90071

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 Plaintiff,)
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 v.) Civil Action No. 5642
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 S. STEVENSON, MAYNARD P.)
 VENEMA, WILLIAM E. WALKUP)
 and HARRY H. WETZEL,)
)
 Defendants.)

MOTION FOR LEAVE TO FILE
AN AMENDED COMPLAINT

(Note)

The plaintiff serves and files this motion for leave to file an Amended Complaint pursuant to the suggestion of the defendant found in Defendant's Brief in support of the motion to dismiss (pg. 9-17). In filing this Amended Complaint, the plaintiff does not concede that the original

Note: This Amended Complaint necessarily omits the derivative count in view of the Court's opinion and order of April 3, 1979.

Complaint filed July 5, 1978, is inadequate. The plaintiff files this Amended Complaint in order to set out in the Amended Complaint the further details that have come to light through the plaintiff's discovery since filing the original Complaint.

AMENDED COMPLAINT

1. The plaintiff is a stockholder of UOP and has been at all times pertinent to this Complaint.

2. UOP, Inc. ("UOP"), The Signal Companies, Inc. ("Signal"), and Sigco Incorporated ("Sigco"), are all corporations of the State of Delaware. Lehman Brothers Kuhn Loeb, Inc. ("Lehman Brothers") is a Maryland corporation qualified to do business in Delaware and at all times pertinent was an investment banker for UOP.

3. The plaintiff brings this action in his own behalf and as a class action for the benefit of the stockholders of UOP as of May 26, 1978. (Note)

4. On May 26, 1978, James V. Crawford was President and Chief Executive Officer of UOP; Charles S. Arledge, Andrew J. Chithea and John O. Logan were officers of UOP; James W. Glanville was a managing director and member of the Board of Lehman Brothers; and Messrs. Arledge, Chithea, Walkup and Wetzel were employees and directors of Signal. All of the individual defendants were elected as directors of UOP at the stockholders meeting held on May 26th.

Note: The Court by its opinion of April 5, 1979, has limited the class (for the present at least) to those stockholders who did not vote affirmatively for the merger being challenged or who have not turned their shares in.

5. On May 26, 1978, Signal owned about 50.5% of UOP's outstanding stock, excluding shares held in UOP's treasury.

6. Signal had acquired its 50.5% interest through the combination of a tender offer for shares of UOP at \$21.00 per share as well as a direct purchase of shares from the treasury of UOP also at a price of \$21.00 per share. Signal used its majority stock position to dominate and control UOP's management and Board for its own purposes and advantage.

7. Signal, management and the Board of UOP and Lehman Brothers all stood in a fiduciary relationship to the plaintiff and the outside or minority shareholders ("outside shareholders"), which duty included, among other things, the duty (1) of affirmatively taking steps to prevent a merger without a bona fide purpose, (2) of opposing a merger whose purpose was to eliminate the outside shareholders, (3) of opposing a merger in which the outside shareholders would be cashed out at an unfair price and (4) refusing to enter into a plan, conspiracy or scheme with others to accomplish any of the foregoing.

8. UOP's current performance and immediate and long range prospects were excellent as the defendants well knew.

9. Signal and the other defendants entered into and carried out a conspiracy, plan or scheme ("the conspiracy") to advance the interest of the majority holders of the stock of UOP, Signal, by eliminating the outside shareholders of UOP through a cash-out merger of UOP into a wholly owned subsidiary of Signal called Sigco. The conspiracy contemplated

and included making it appear to the outside stockholders that the defendants, all of whom were fiduciaries to the outside stockholders, had fully carried out their fiduciary responsibilities to the outside stockholders with the objective of getting the outside stockholders to vote affirmatively in favor of the merger that would eliminate them (in reliance on the representations and appearances of the defendants that they had carried out their fiduciary responsibilities).

10. Signal management determined in January and February, 1978, that, while there was no valid or compelling business reason for doing so, the best economic opportunity for Signal at the time would be the forced acquisition of the shares of UOP held by the outside shareholders.

11. The conspiracy had its inception on February 28, 1978, when Crawford, a director of Signal and UOP's President and Chief Executive Officer, was informed of the prior determination of the majority stockholder of UOP, Signal, by its officers and Executive Committee, that Signal had decided for its own economic advantage to effect a merger of UOP into a wholly owned subsidiary of Signal called Sigco, including the cash-out of the minority shareholders at a price in the "range" of \$20-\$21 per share (though Signal management had obtained figures indicating that a price of \$25.00 or more would be economically advantageous to Signal).

(a) Crawford disregarded the best interests of the minority shareholders of UOP by immediately agreeing to Signal's proposed merger and the cash-out of the

outside stockholders without any evaluation or consideration by management or directors of UOP or independent experts of the merger nor the price which the majority was going to cash out the minority.

(b) Crawford agreed to the majority's price, without attempting to negotiate any higher price and without attempting to negotiate a tax-free exchange of securities or any sort of a securities exchange.

(c) As part of the conspiracy, Crawford did not reveal to the outside stockholders that, at the initial meeting with the majority stockholder, he had agreed to (a) and (b) above.

12. As part of the conspiracy, after the meeting between Crawford and the officers and Executive Committee of the majority stockholder on February 28, 1978, a press release was issued on February 28, 1978, jointly by Signal and UOP announcing that Signal and UOP "are conducting negotiations".

(a) No negotiations ever took place between Crawford and/or the management of UOP and representatives of the majority stockholder either as to the merger itself, the price or other terms.

(b) The press release announcing "negotiations" was never corrected by a correct press release or notice to the outside stockholders of UOP that no negotiations had taken place: a later press release referred to "negotiations" that never took place.

(c) The Proxy Statement and Notice of the Annual Meeting of UOP (i) never stated that there had been no negotiations at all, (ii) affirmatively referred to negotiations, and (iii) elsewhere deceptively and falsely stated that the price had been arrived at "after discussions" and "conversations" between Crawford and the officers of Signal.

13. As part of the conspiracy, the defendants made it appear and the outside stockholders were led to believe that an independent evaluation of the fairness of the proposed merger to the outside stockholders had been obtained from Lehman Brothers, an investment banker.

(a) It was not revealed that Lehman Brothers was not independent since it had previously prepared a memorandum directed to Signal advising Signal that it was in Signal's best interest to cash out the outside shareholders for \$21.00 per share.

(b) It was not revealed that Mr. Glanville who gave the fairness opinion made no review or study nor made any calculations but simply gave his personal opinion that the price was fair.

14. As part of the conspiracy, the defendants made it appear and the outside stockholders were led to believe that the management and the Board of UOP had carefully considered and unanimously approved the proposed merger.

(a) It was not revealed that the Board of UOP was nominated and controlled by Signal.

(b) It was not revealed that the Board of UOP (1) did not ⁽¹⁾itself consider the merger from the point of view of the outside stockholders as opposed to the economic interest of the majority stockholder, Signal, nor (2) refer the consideration of the proposed merger to an independent group of directors, nor (3) inquire as to whether there had been any negotiations on price or other terms on behalf of the outside stockholders, nor (4) make any inquiry as to the independence of Lehman Brothers or the basis for Lehman Brothers' fairness opinion.

15. As part of the conspiracy, the defendants made it appear and the outside stockholders were led to believe that the management of UOP had considered the best interests of the outside stockholders and concluded that their best interests would be served by voting for the merger.

(a) It was not revealed the extent to which management had been assured favorable consideration by Signal if the merger were approved.

(b) It was not revealed that management of UOP had made no studies itself or consulted outside sources to provide a proper basis for the repeated urging of the outside stockholders to vote for the merger in the Proxy Statement and Notice of the Annual Meeting.

(c) It was not revealed that the management of UOP had retained, without Board approval, Georgeson & Co., a professional proxy solicitation firm, to solicit proxies in favor of the approval of the merger.

16. The conspiracy succeeded: the outside stockholders, deceived by representations and appearances that the defendants, their fiduciaries, had faithfully carried out their obligations, duly voted by a twelve-to-one ratio in favor of the merger. Signal, pursuant to the conspiracy, then voted in favor and the merger was adopted and carried out.

17. The plaintiff has no adequate remedy at law.

WHEREFORE, the plaintiff prays:

1. That the Court enter an order enlarging the class to include all outside stockholders of UOP as of May 28, 1978.


2. Rendering judgment for the plaintiff and the class for the losses incurred by the class as a result of the acts of the defendants.

3. Awarding the plaintiff the costs and expenses of this litigation, including reasonable attorneys' fees.

4. Granting such other and further relief as may be just, including rescission, if appropriate, or rescissionary damages.

PRICKETT, SANDERS, JONES,
ELLIOTT & KRISTOL

By



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Wilmington, Delaware 19899
Attorney for Plaintiff