

HENRY D. SGOGMO - LORRAINE B. MARINO
Official Reporters, Chancery Court
135 Public Bldg., Wilmington, Del. 19801

BEFORE THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM B. WEINBERGER,)
)
Plaintiff,)

v.)

No. 58, 1981

UOP, INC., THE SIGNAL)
COMPANIES, INC., SIGCO)
INCORPORATED, LEHMAN BROTHERS)
KUHN LOEB, INC., CHARLES S.)
ARLEDGE, BREWSTER L. ARMS,)
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.)

Supreme Court Building
Dover, Delaware
September 14, 1981
2:00 P.M.

BEFORE: HON. JUSTICES WILLIAM DUFFY,
WILLIAM T. QUILLEN and JOHN J. McNEILLY.

APPEARANCES:

PRICKETT, JONES, ELLIOTT, KRISTOL & SCHNEE,
By WILLIAM PRICKETT, ESQ.
For the Plaintiff.

MORRIS, NICHOLS, ARSHT & TUNNEL,
By A. GILCHRIST SPARKS, III, ESQ.,
For Defendant-UOP.

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POTTER, ANDERSON & CORROON,
By ROBERT K. PAYSON, ESQ.,
-and-
LATHAM & WATKINS,
By ALAN N. HALKETT, ESQ., of the California Bar
For Defendant - The
Signal Companies, Inc.

RICHARDS, LAYTON & FINGER,
By R. FRANKLIN BALOTTI, ESQ.,
For Defendant-Lehman
Brothers Kuhn Loeb, Inc

ALSO PRESENT:

BREWSTER L. ARMS
Vice President and General Counsel
The Signal Companies

* * *

oral by I. Sigm. Ct.

1 needed to be, the many, many instances in which we
2 believe the defendants failed to meet the standard of
3 complete candor. But let me touch on a few examples:

4 The Arledge-Chitiea report^{er} of January
5 or February before the cash-out merger. Messrs. Arledge
6 and Chitiea, two UOP directors, drew up a report that
7 was disseminated to the majority stockholder. It was
8 based on inside UOP financial information, and showed,
9 among other things, that Signal would profit from the
10 cash-out merger at any price up to \$24. This report
11 was used by Signal directors and its executive committee
12 in determining whether to do the merger, and determin-
13 ing the \$21 price. The report was not disclosed to
14 the independent UOP directors, nor was it disclosed
15 to the minority stockholders. A reasonable stockholder
16 would regard a current financial study made of the
17 value of UOP by two of its directors who were financial
18 men as significant in evaluating Signal's cash-out
19 merger itself and the price.

20 The court below makes specific findings
21 that the report was made and that the facts that I
22 have just disclosed were in fact true, but the opinion
23 of the court below is silent as to the legal effect of
24 the non-disclosure of the Arledge-Chitiea report to the

1 in this case. First of all, in the Lynch versus
2 Vickers situation, on the liability phase of it there
3 were two questions, as we understand it.

4 Number one, there was a report which had
5 been prepared which indicated a value of the corporation's
6 assets which was available to the majority shareholder,
7 and which was not disclosed to the minority in the proxy
8 material. No such fact exists anywhere in this case,
9 not withstanding the plaintiff's effort to try to
10 create one.

11 They discuss this internal report that was
12 created at Signal in which there is something about any--
13 thing up to \$24 would be a good investment. All that
14 report is -- and that's one of the reasons I urge the
15 Court to look at the evidence. That report clearly on
16 its face shows what it was, namely, a proforma spread
17 sheet showing the economic income effect to the Signal
18 Companies of buying these shares at different prices in
19 a range from roughly \$17 to \$27. And it is obvious
20 that in any such sheet you will come to a point where
21 if you pay so much for it, you won't earn any money,
22 and it will be uneconomic, and at the other end you
23 make a lot of money. And someplace in there you cross
24 over the boundary that says if we pay "X" dollars, and

1 we expect to earn "Y" dollars, we will have such and
2 such return on our money.

3 As a matter of fact, what this report then
4 was based upon is the same factual information that was
5 given to the minority shareholders in the proxy material.
6 The only difference in it was, was it contained in
7 Signal's arithmetic, mathematical calculations as to
8 what happens when you put those figures together.

9 It is obvious then that what Signal found
10 is that at a range of between \$17 and \$24 or \$25, the
11 dollars back would be some incrementally greater than
12 that which they would spend. They wouldn't lose money
13 on it. This doesn't necessarily make it a prudent nor
14 a fair investment from its standpoint.

15 I can invest money today in a passbook
16 savings account at the bank and earn five and a quarter
17 percent, but that's not necessarily either a good or a
18 prudent investment if I'm taking care of someone's money
19 and if I know the market today will command 15 or 16
20 percent if I simply take it down and put it in a different
21 kind of fund. That's all that was, was an analysis of
22 the economic result. There is no need, and there is
23 case law which says it is not necessary to put in proxy
24 material conclusions which the reader can fashion for

1 business reason to do it, but you can't do it just
2 because it is a good thing for you to do, and that's
3 precisely what the Vice Chancellor decided, and there
4 is no getting around it.

5 Now, either that rule obtains or it doesn't
6 obtain, but he has decided the case right squarely in
7 the face of what this Court has held.

8 Now, there were arguments made today about
9 what the Arledge-Chitiea report does and doesn't do.
10 It's spread sheets, it's this, it's that. Fine. That's
11 exactly what Lynch said. Disclose it. Make all the
12 arguments you want, but you must disclose it. And the
13 plain fact of the matter is there was a finding of fact
14 on this.

15 Two UOP directors who were also Signal
16 directors made a study, and they did not disclose it.
17 It was used by the majority in its decision to cash-out
18 the minority, and the price at which it would do it.
19 What is sauce for the goose is sauce for the gander,
20 and we were entitled to see that.

21 Now, there is a suggestion that Signal
22 never authorized more than \$21. Of course they didn't.
23 Nobody ever asked them for more, so why should they
24 authorize more? What they did was authorize their