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SUPREME COURT OF DELAWARE

WILLIAM T. QUILLEN  
JUSTICE

THE ELBERT N. CARVEL  
DELAWARE STATE BUILDING  
WILMINGTON, DELAWARE 19801

May 19, 1982

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Re: Weinberger v. UOP, Inc., et al.  
No. 58, 1981

Gentlemen:

Mr. Prickett on behalf of the plaintiff has filed a motion pursuant to Supreme Court Rule 30(b). No answer to the motion has been filed by any of the other parties and therefore the motion can be deemed to be unopposed. Supreme Court Rule 30(c).

The reference to Supreme Court Rule 30(b) is evidently a mistake. I surmise that it was the intention to refer to the dismissal rule, Supreme Court Rule 29, and particularly

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Page 2

to the provision governing involuntary dismissal contained in Section (b). The purpose of Mr. Prickett's motion is to remove the ground for disqualification of one member of the Court. Indeed, the recital in the proposed order indicates that, by signing the proposed order, this Court has "concluded that, absent a removal of the basis for the disqualification of the Chief Justice, the Court en banc would consist of less than five members".

The necessity of disqualifications is perhaps consistently more distressing to the members of the Court than to anyone else. But the Court cannot put itself in the position of granting a particular motion in order to guarantee a litigant a particular Justice or a particular number of Justices. As I read this motion, counsel is in effect engaging the Court in the bargaining process. I have therefore entered the enclosed order denying the motion.

Two other comments occur to me as perhaps appropriate.

First, since the procedural posture of the present motion indicates that no party objects to the dismissal of the appeal as to the defendant Lehman Brothers Kuhn Loeb, Inc., a voluntary dismissal may be made upon stipulation of all the parties. Supreme Court Rule 29(a). The Court of course makes no comment as to the consequence of such a voluntary dismissal. Second, Mr. Prickett's motion refers to a "decision denominated as a decision of the Court en banc" and states that the Court "is to rehear en banc all issues of the plaintiff's appeal." That description is inaccurate. The opinion dated February 9, 1982 was the opinion of the Court en Banc and reargument before the Court en banc was granted by Justice Duffy's order dated March 16, 1982. It is correct that reargument was not limited to any particular issue or issues and therefore all issues can be reargued.

Very sincerely yours,

*William J. Justice*

WTQ/bn

c: The Honorable John J. McNeilly  
The Honorable Henry R. Horsey  
Clerk of the Supreme Court

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM B. WEINBERGER,  
Plaintiff Below,  
Appellant,

v.

UOP, INC., THE SIGNAL  
COMPANIES, INC., SIGCO  
INCORPORATED, LEHMAN  
BROTHERS KUHN LOEB, INC.,  
Defendants Below,  
Appellees.

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No. 58, 1981

Submitted: May 7, 1982  
Decided: May 19, 1982

Before QUILLEN, Justice.

O R D E R

This 19th day of May, 1982,

The plaintiff's motion for leave to dismiss his appeal  
as to the defendant Lehman Brothers Kuhn Loeb, Inc. having  
been presented,

IT IS ORDERED that the motion is  
DENIED.

*William J. Quillen*  
Justice