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BY HAND

July 16, 1982

RECEIVED
1982 JUL 19 AM 9 21
FROM
ELLOTT, REYNOLDS
& SCORSE

The Honorable Daniel L. Herrmann
Chief Justice
Supreme Court of the State of Delaware
820 N. French Street
Wilmington, Delaware 19801

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

Dear Chief Justice Herrmann:

On review of the transcript of the argument held before this Court on June 23, 1982 ("TR____"), it became apparent that the Court and counsel were proceeding under a mistake of fact with respect to one of the matters upon which the argument focused, namely, the disclosure of information contained in a series of spread sheets prepared at Signal by Messrs. Chitiea and Arledge entitled "UOP ACQUISITION, March 6, 1978" (Plaintiff's Trial Exhibit PX-74; A1472-1499) ("PX-74"). Early in the argument the following questions and answers were asked and given:

"JUSTICE MOORE: In fact when did it [PX-74] first come to the attention of the independent members of the UOP board?

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"MR. PRICKETT: I think when they read my complaint, or the discovery.

"JUSTICE MOORE: In other words, the first time that saw the light of day outside of Signal's precincts was when you filed your lawsuit?

"MR. PRICKETT: Not when I filed it.

"JUSTICE MOORE: Or when you got into discovery?

"MR. PRICKETT: Finally I found it on discovery, that they had all this inside information that had never been disclosed either to the stockholders of UOP or to the so-called outside directors. . . ."

TR 21. Thereafter, the Court and counsel proceeded on the assumption that such answers had been correct. See e.g., TR 42, 45-46, 52-54.

However, the trial record shows that William E. Walkup, the Chairman of the Board of Signal and a director of UOP, attended the March 6, 1978 UOP Board meeting, and that he discussed PX-74 with the members of UOP Board at that time. In fact, Mr. Walkup testified that he provided a copy of PX-74 to the UOP directors at that meeting. Thus, Mr. Walkup testified at his deposition,* in response to questions by Mr. Prickett:

* Mr. Walkup's deposition was taken on December 14, 1978 (Docket Entry No. 59), and Mr. Prickett offered the transcript as part of plaintiff's case (Trial Transcript, p. 12).

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"Q On March 6th, 1978 there were two meetings that were later joined by telephone, one of the Signal Companies and one of UOP; is that right?

"A Yes.

"Q And you attended the UOP meeting; is that correct?

"A Yes.

* * *

"Q What was the significance of your saying that you wanted to be available, or words to the effect that you wanted to be available, to answer questions of the outside directors?

"A Well, in their UOP board evaluation of the offer and the offer being made by Signal and where I wore two hats and therefore represented Signal, I could be in a position to respond to them in how we arrived at the price.

"In fact, I believe I recall now Mr. Chithea, I believe, had prepared a summary of figures. I can't remember all that was in the summary.

"And I took a copy of that to have available and turned it over to them after discussing certain points in it.

"Q I hand you a document that has previously been marked Plaintiff's Exhibit 74, "UOP Acquisition, March 6, 1978," and ask you if you believe that that is the document that you took.

* * *

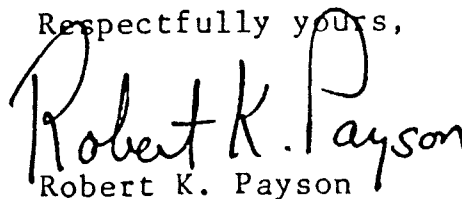
"A This is the schedule or list of schedules that I referred to as having taken back, yes."

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Walkup Dep., pp. 43-45, copies of which are attached hereto.
See also, Minutes of Special Meeting of Board of Directors of
UOP Inc. on March 6, 1978 (B499-505, esp. at p. B500).

I apologize for any inconvenience to the Court caused
by this letter, but because of the time devoted to this subject
during the oral argument, I thought it important to bring the
facts of record to the Court's attention.

Respectfully yours,


Robert K. Payson

RKP/sg

CC: The Honorable John J. McNeilly
The Honorable William T. Quillen
The Honorable Henry R. Horsey
The Honorable Andrew G. T. Moore, II
William Prickett, Esquire
A. Gilchrist Sparks, III, Esquire
Mr. T. E. Townsend, Jr., Clerk

1 A That was my reaction to it, yes. And it was
2 his negotiation, and I wasn't going -- he wasn't going to
3 buck it up to me for responsibility. That's just a manage-
4 ment practice, whether it's this company or that company or
5 any company.

6 Q On March 6th, 1978 there were two meetings
7 that were later joined by telephone, one of The Signal
8 Companies and one of UOP; is that right?

9 A Yes.

10 Q And you attended the UOP meeting; is that
11 correct?

12 A Yes.

13 Q How did you happen to do that, in contrast to
14 attending the Signal meeting, they being in two different
15 places in the country?

16 A Oh, it came about as a general discussion
17 of who should be where, and I was Lucky Louie, I guess you
18 might say, in having to go back to Chicago to be available
19 to the outside directors to answer their questions.

20 Q Did you go to the meeting as a representative
21 of Signal or as a UOP director, or didn't you distinguish at
22 the time?

23 A I didn't distinguish at the time. I'm there
24 as both.

25 Q I think you said in your previous answer that
26 you went there to be available for questions of the outside
27 directors; is that right?

28 A Yes.

1 Q And on the UOP board there were a number of
2 people who were officers and directors of Signal; that is,
3 yourself, Mr. Shumway, Mr. Arledge, Mr. Chitiea were directors
4 of Signal and of UOP, and I think that also includes
5 Mr. Wetzel; is that correct?

6 A Yes.

7 Q And then UOP also had some outside directors,
8 did it not?

9 A Yes.

10 Q What was the significance of your saying that
11 you wanted to be available, or words to the effect that
12 you wanted to be available, to answer questions of the
13 outside directors?

14 A Well, in their UOP board evaluation of the
15 offer and the offer being made by Signal and where I wore
16 two hats and therefore represented Signal, I could be in a
17 position to respond to them in how we arrived at the price.

18 In fact, I believe I recall now Mr. Chitiea,
19 I believe, had prepared a summary of figures. I can't
20 remember all that was in the summary.

21 And I took a copy of that to have available
22 and turned it over to them after discussing certain points
23 in it.

24 Q I hand you a document that has previously
25 been marked Plaintiff's Exhibit 74, "UOP Acquisition,
26 March 6, 1978," and ask you if you believe that that is the
27 document that you took.

28 MR. HALKETT: And in responding to the question,

1 ignore the handwriting. I don't think he's asking you
2 their --

3 Q BY MR. PRICKETT: I am not asking you whether
4 your copy had the handwriting notations that appear on the
5 copy that has been marked.

6 A This is the schedule or list of schedules
7 that I referred to as having taken back, yes.

8 Q Do you recall any questions that were asked
9 of you at the meeting of the board of UOP on March 6, 1978?

10 A I can't distinguish in my mind in trying to
11 recall whether they were statements that I anticipated
12 questions on and I, therefore, answered by making statements
13 or whether they did ask them and I then answered them.

14 And the nature, to the best of my ability,
15 dealt with my explaining to them pretty much step by step
16 what I previously testified to this morning about the
17 comparison of 1974 and 1977 results, and that the 1974
18 book value is 19.40, and without the infusion of our
19 capital the book value would be about \$17. Therefore, we
20 were paying a substantial premium over book value. We were
21 paying, obviously, a substantial premium over market value,
22 and the same price that we had offered to shareholders in
23 1975 and the purchase of the treasury stock from UOP, that
24 tender offer having been overwhelmingly subscribed and,
25 therefore, from a practical market standpoint being deemed
26 to be a generous price or they wouldn't have oversubscribed.
27 Answered questions or made statements in
28 regard to our philosophy of management concerning 100 percent