Doc.

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

GROVER C. BROWN
CHANCELLOR

March 7, 1984

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Re: Weinberger v. UOP, Inc.,
et al, Civil Action No. 5642

Gentlemen:

By my long-ago letter of April 12, 1983 I determined that I would grant the request of the defendants for a preliminary evidentiary hearing on the question of whether or not rescissory damages would form a part of the final hearing in this matter. In effect, by so doing, I am affording the defendants an opportunity to prove, if they can, that rescissory damages should not be considered despite the fact that the Supreme Court has found that Signal, as majority shareholder, breached the obligation of "fair dealing" owed by it to the minority shareholders of UOP as a result of the manner in which

the merger proposal was put together and made known to the minority shareholders.

The primary purpose of this letter is to establish a schedule for the conclusion of the case in this Court. To that end, the aforementioned preliminary hearing will be scheduled for April 5 and April 6, 1984 commencing at 10:00 a.m. each day in Courtroom No. 2 in Wilmington. Further, the final hearing on the matter will commence on Monday, June 18, 1984 and will continue for so much of that week as may be necessary.

At the preliminary hearing on May 5 the defendants will be permitted to present testimony by Mr. Arledge and Mr. Chitiea in addition to that of any other Signal or UOP witnesses they may choose to call. For the limited purpose of the preliminary hearing the defendants will not be permitted to call witnesses from Lehman Brothers. I ask the defendants to promptly disclose to Mr. Prickett the identity of the persons whom they intend to call and the general area of their testimony. Defendants should also produce (or identify if previously produced) any documents which they intend to introduce at the hearing or on which they tend to rely. As to any documents which were placed in evidence during the previous trial, I suggest in the interest of clarity and simplicity that they

be reintroduced and be given a separate exhibit number for the purpose of the hearing. Mr. Prickett will be entitled to such reasonable additional discovery as may be necessary given the limited scope of the hearing. Plaintiff shall also disclose the identity of any witnesses he intends to call and the area of their testimony, and also make a similar production or identification of documents to be introduced or relied upon.

As to the issue to be considered at the preliminary hearing, I must still confess some uncertainty which, of course, derives from the Supreme Court opinion. As best I can tell the Supreme Court held that entire fairness in this situation was comprised of two elements, namely, (1) fair dealing and (2) fair price. It has found that the fair dealing element was violated and it has remanded the case to this Court for a reconsideration of the fair price element based upon the new and broadened standard set forth in the opinion. In the process the Supreme Court has also found that it is too late for the merger to be undone and therefore it has directed that I consider the possible award of rescissory damages if, in my discretion, I consider that to be an appropriate remedy and, also, if I consider rescissory damages to be susceptible of proof under the circumstances. Thus, the Supreme Court

opinion clearly contemplates that the situation may not warrant an award of rescissory damages even though Signal has been found to be guilty of unfair dealing and even though it is too late for the merger to be undone. As I perceive it, it is to this point that the defendants wish to address themselves at the preliminary hearing.

I think that I appreciate Mr. Prickett's position in opposing the preliminary hearing approach. As I understand it, he is saying that the Supreme Court has already found on the facts that Signal has been guilty of unfair dealing of a nature which has rendered the vote of the minority on the merger an uninformed one which, in turn, has vitiated the vote by which the merger was approved. Thus, he is saying that the basis for rescinding the merger, and thus the basis for rescissory damages in lieu of rescission in kind, has already been established. Thus, it is his position that in order for the Court to now determine whether or not entire fairness requires an award of rescissory damages, it is first necessary for the Court to ascertain what the value of UOP stock is now (or at the time of the Supreme Court's liability finding or at whatever other time might be found to be appropriate). To this end he views the preliminary hearing to be needless since it is his position that the Court cannot make a

decision on rescissory damages until it hears evidence and makes a value determination as to the stock of UOP at whatever post-merger date is selected.

In other words, as I perceive it, Mr. Prickett is arguing that liability has already been established and that the Court is now left with an option in determining what the victimized minority shareholders should be entitled to receive. But he says that the Court cannot make that determination until it knows what its options are. The option possibilities are, as I understand his argument, the fair price of the UOP shares as of the date of the merger, as determined hereafter under the new and broadened standard, or the value of the UOP shares at whatever post-merger date is selected, the decision to go, presumably, to whichever of the two is the greater. Thus, he is arguing that rescissory damages cannot be ruled out by the Court until all the evidence on value is in, and that the requisite evidence cannot be put in until such time as plaintiff is afforded full post-merger discovery of UOP for the purpose of investigating post-merger value of its shares. He says that in no event can Signal rule out rescissory damages by attempting to relitigate the Supreme Court's finding of unfair dealing.

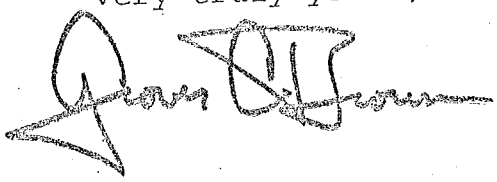
If I have now finally understood Mr. Prickett's

argument correctly, I am now prepared to concede that it has a great deal of logic to it. At the same time, I think that the Supreme Court decision has also left open the possibility that even though a case such as this may involve something more than the fairness of the merger price in that a majority shareholder may have been guilty of some fraud, misrepresentation or other such breach of fiduciary duty, the situation may nonetheless be one in which rescission, and thus rescissory damages, would not be appropriate under the facts of the matter. I perceive it to be Signal's position here that it feels that it can show facts to the Court which would persuade the Court that rescissory damages would not be a warranted and appropriate remedy in this case despite the fact that the Supreme Court has made a finding in its decision that the conduct of the defendants did not satisfy "any reasonable concept of fair dealing." If Signal can make such a showing then the considerable expenditure of time and money that would otherwise needlessly go into the discovery and preparation for the rescissory damage issue under plaintiff's theory could be avoided.

Accordingly, the scope of the preliminary hearing on April 5 will be limited to this aspect of the matter, and it will not involve the taking of evidence on the

question of the value of the UOP shares either on the date of the merger or at some point thereafter. These matters, to the extent necessary, will be addressed at the final hearing to be held commencing June 18. The extent of the discovery to be undertaken for the purpose of that final hearing will naturally be dependent to a degree on the outcome of the April 5 hearing and will be dealt with thereafter.

Very truly yours,



GCB:mlw

cc: Register in Chancery