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366

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

EDITH CITRON, Plaintiff, v. E.I. DU PONT DE NEMOURS & CO., REMINGTON ARMS COMPANY, PHILIP H. BURDETT, JOSEPH A. DALLAS, ROBERT W. DIXON, RICHARD E. HECKERT, JOHN P. McANDREWS, ELDON M. ROBINSON, FREDERICK B. SILLIMAN and ALEXANDER L. STOTT, Defendants.	)	C.A. No. 6219

PLAINTIFF'S REPLY POST-TRIAL MEMORANDUM

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

INTRODUCTORY STATEMENT

This memorandum is submitted in reply to the post-trial briefs of the Du Pont defendants (Du Pont and individuals affiliated with Du Pont who were members of the Remington board at the time of the merger and John McAndrews, the Chief Executive Officer of Remington at that time) and the Remington defendants (the Special Committee and Philip Burdett, the chief executive officer of Remington at the time the merger was proposed). Plaintiff has heretofore submitted her principal post-trial memorandum ("plaintiff's principal memorandum") which refutes most of the contentions raised in the defendants' post-trial briefs. Rather than repeating the refutations of defendants' contentions already set forth in plaintiff's principal memorandum, plaintiff relies on her principal memorandum and respectfully refers the Court thereto. In this reply memorandum, an attempt is made to respond only to contentions of defendants which are not already fully refuted in plaintiff's principal memorandum and/or to provide further emphasis on matters as may be required because of erroneous or misleading statements by defendants as to the record or the applicable law.

REPLY TO MATTERS PERTAINING TO THE FAILURE BY THE SPECIAL COMMITTEE AND THE REMINGTON DIRECTORS TO EXERCISE DUE CARE AND/OR LOYALTY

A. The Remington Directors and Special Committee Did Not Ascertain The Value Of Remington Notwithstanding That They Approved Its Sale On A Per Share Basis For Marketable Stock With A Fixed Market Price Range of $23.24 To $25.85.

The basic concept that a director cannot possibly fulfill his duties in approving the sale of a company, without ascertaining the value of that company, is so axiomatic that even the defendants now attempt to claim that such a determination was made. At page 56 of the post-trial brief of the Remington defendants, after observing that plaintiff claims that Salomon Brothers had not ascertained the value of Remington, the Remington defendants state, "Of course, Salomon Brothers evaluated Remington for months. . .All that Salomon did not do was issue a formal opinion of the firm placing a dollar value upon the Remington minority stock." Similarly, that brief states, "Salomon found [the range of Remington's value] to be $22 to $25" (Remington Defendants' Brief, p. 43, n. 20) and that Salomon "did arrive at a value or range of value representing its view of the inherent value of Remington Stock" (Id. at 58). However, as much as the defendants now claim that Salomon Brothers had determined the value of Remington, the overwhelming evidence is that Salomon and the Special Committee did not. As reprehensible as it is, the Special Committee, the Remington directors and Salomon all

accepted a price of $23.24 to $25.85 for the company without ascertaining what the company or the minority shares were worth.

When the court, to assure that the testimony was clear on the matter, asked Michael Zimmerman ("Zimmerman") of Salomon:

> "Now, at the time that Salomon Brothers concluded [that it would not be able to opine that the original .52 exchange ratio was fair], I believe you testified as to two things. First, you said that Salomon did not have a specific dollar value or range in values in mind that would constitute a fair value per each share of Remington. On the other hand, you also testified that you had in your mind, and perhaps your colleagues also had in their minds, a range of from $22 to $25 per share."
>
> Zimmerman answered: "Yes sir. That's correct. (Tr. VII, 5/17/88, p. 173.). . .We didn't try to put a number on the fair value." (Tr. VII, 5/17/88, p. 174).
>
> When the Court then asked:
>
> "And my question is, how could Salomon have concluded that the .52 ratio was unfair unless it was in reference to a ratio or range of values that wasn't fair?" (Tr. VII, 5/17/88, p. 176),

Zimmerman did not respond by saying there had been a range of values ascertained as a reference, but spoke of such things as:

> ". . .it was a moving target. . .Its absolute value in terms of dollars and cents varied as Du Pont common stock varied. . .no one's equity interest is being extinguished. . .what we had to do was look at what is the market value of that holding that they are receiving [their holding in Du Pont, not Remington] but also look beyond simply market values and look at what I call investment values, the proportional earnings and dividends and future cash flows which would accrue to them as ongoing shareholders of Du Pont" (Tr. VII, 5/17/88, p. 176-7).

Zimmerman, when confronted with his deposition testimony in which he admitted that Salomon had not valued Remington, conceded the deposition testimony was correct:

> Question: "Let me read that [portion of the deposition] over again, and if you wish, I'll read the rest of the paragraph. 'Question: Did Salomon arrive at what a fair per share value of Remington common stock should be with the collar? Answer: No. We nevertheless picked the fair value. We never had such a number. Remington received from Du Pont a proposal of .55 shares of common stock. That proposal with the addition of a collar was a transaction that we said could be fair.' Did you so testify?"
>
> Answer by Zimmerman: "I did, and I don't think that is at all inconsistent with the other testimony." Tr. VII, 5/17/88, p. 101.
>
> Similarly, when Zimmerman was asked:
>
> "Did you have in mind a minimum level of value for Remington shareholders to be achieved even with a collar?"
>
> Zimmerman responded: "Not specifically, no."
>
> And when asked: "In August or September of 1979 did Salomon arrive at a figure which was a fair value for Remington common stock?"
>
> Zimmerman answered: "No we did not." (Tr. VIII, 5/17/88, p. 103.)

Members of the Special Committee also testified that there was no valuation for Remington. Dixon testified:

> Question: Did you ascertain from Salomon Brothers if they arrived at a value for Remington as a going concern?
>
> Answer: We did not specifically ask Salomon Brothers to give us a value of Remington as a going concern.
>
> Question: Did they ever tell you of any such valuation that they had made even though you had not asked them for it.

Answer: No.

Stott, the chairman of the Special Committee, testified that he did not ascertain what Remington was worth:

> Q.: Did Salomon Brothers ever tell you Remington is worth x amount of dollars per share.
>
> Answer: Salomon never told me that. What Salomon finally told me was that the offer of .52 was, in their judgment, difficult to say that it was fair, I don't think. . .
>
> Q.: Did you ever ask Salomon what Remington was worth?
>
> A.: No.
>
> Q.: "To your knowledge, did any member of the merger committee ask what Remington was worth?"
>
> A.: "I don't know if they did." (Deposition of Stott, p. 77-78.)

See also further references to testimony on page 56 of plaintiff's principal memorandum.

For defendants to say, as they do, that Salomon determined the value of Remington, is incredible in light of this evidence to the contrary.

The defendants also state that D.X. 54, a book of material maintained internally by Salomon in connection with the transaction, represents an evaluation by Salomon of Remington. However, not only does D.X. 54 contain no evaluation of Remington, but, except for the "present value analysis" set forth as Exhibit I-I in D.X. 54, D.X. 54 does not even contain an analysis pertaining to value. Most of the material therein consists of compilations of data. The

"present value analysis", far from providing a valuation of the company, is a discounted cash flow analysis providing a sixteen figure matrix ranging from $20.99 to $43.18 per share. Thus, while D.X. 54 provided certain information to Salomon which might have been useful to it in performing a valuation of Remington, nothing in D.X. 54 consists of such an evaluation. As shown above, the testimony shows that no such valuation was made, and that Salomon, the Special Committee and the Remington directors blindly agreed to sell the company for from $23.24 to $25.85 per share.

B. The Defendants Did Not Refute The Evidence That The Value Of The Consideration Received By The Remington Shareholders Was Determined By The Market Price Of The Du Pont Stock.

At pages 11 through 15 of plaintiff's principal memorandum, it is shown that, because the collar fixed the market price of the Du Pont stock to be received to an agreed upon narrow range, while varying the exchange ratio for that purpose, the consideration received by the Remington shareholders was defined by the market value of the Du Pont stock received and could not be valued by comparing the earnings, dividends, book value and such other parameters of the stock received with those of the stock surrendered. It is also shown that the Special Committee considered the value of the consideration to be the market price of the Du Pont stock received. Accordingly, the failure of the Remington defendants

Even Salomon tended to support the appropriateness of the seven price earnings ratio arrived at by Belfer. In the discounted cash flow analysis performed by Salomon (Exhibit I-I of DX 54) price earnings ratios of 4, 6, 8, and 10 were utilized. The median of those price earnings ratios is 7.

The defendants also contend Belfer's utilization of future anticipated earnings, rather than current earnings, was improper. This is refuted in plaintiff's principal memorandum, at pages 40-42. The only comments of defendants on the question that need be addressed here are the ludicrous statements (1) that Belfer was inconsistent because he utilized future earnings at the same time he utilized historic price earnings ratios, and (2) that the future earnings utilized by Belfer in his price earnings analysis indicate a higher earnings growth rate than the 8% growth rate Belfer utilized in his discounted cash flow analysis.

The manner in which price earnings analysis is performed is to multiply the anticipated earnings by current price earnings ratios. That is what Belfer did. Anticipated earnings are commonly projected, future price earnings ratios are not. Moreover, Belfer did not simply look at the historical price earnings ratios of Remington, but at price earnings ratios of other comparables as well to arrive at a reasonable conclusion.

As to the fact that the earnings utilized in Belfer's price earnings ratio provided for greater earnings growth than the 8% growth rate utilized in the discounted cash flow

to evaluate Remington so as to compare the result of such valuation with the market price of the Du Pont stock received, cannot be excused by their contention that the transaction was a stock for stock exchange or that a comparison of the stock parameters received with those surrendered sufficed.*

While the defendants have, for the most part, failed to address the matters shown in plaintiff's principal memorandum on this issue, there are two specific contentions raised by defendants which require further comment. The first is defendants' contention that plaintiff failed to address the "long term" position of a Remington stockholder who retained the Du Pont stock received in the merger. The second is the contention that, under the collar, the market price of Du Pont stock could vary to the same degree as the exchange ratio, dividends on the stock received, and earnings per share on the stock received. Thus, the argument goes, the dividends and earnings on the Du Pont stock to be received were no more

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* As explained at page 10 of plaintiff's principal memorandum, the average closing price of Du Pont stock for the ten trading days before the scheduled shareholder meeting determined the final exchange ratio and was $40.50. This resulted in a market value of $23.24 for the stock received on each Remington share upon the merger. The argument in note 3, pp. 20-21 of the Du Pont Defendants' Post Trial Brief that, since the market price of Du Pont stock closed at $40.87 on the day of the merger, the market price of the Du Pont stock received per share of Remington stock was $23.46, is specious. The closing price on the last day is arbitrary as a benchmark. The ten-day preceding average is far less arbitrary, particularly since the exchange ratio was determined on the basis of that average.

uncertain than the stock's market price and, therefore, provided as certain an indicia of value. Neither of defendants' contentions is valid.

i. The "Long Term" Position Of A Remington Shareholder Who Retained The Du Pont Stock Received In The Merger.

Since the market price of the Du Pont stock received upon the merger was fixed within a narrow range by reason of the collar, while the number of shares to be received varied, the market price equated to the value of the "long term" position of a Remington stockholder who retained the Du Pont stock received in the merger. Any person who obtained the fixed market price of the Du Pont stock could utilize those funds to place himself in the "long term" position of a Remington stockholder who had retained the Du Pont stock, simply by purchasing the Du Pont stock on the market. Accordingly, whatever the "long term" position of such a stockholder was, its value at the time of the merger was determined by the fixed market price of the Du Pont stock received. Thus, particularly since the variable exchange ratio rendered it impossible to ascertain the number of shares to be received, the contention that the "long term" position of those who held the Du Pont stock was ignored is nonsense.

ii. The Change In Earnings, Dividends, Book Value And Other Stock Parameters Effectuated By The Merger Varied Substantially Throughout The Collar Range, While The Market Price Of The Du Pont Stock To Be Received Remained Fixed Within A Narrow Range.

The figures utilized by the Remington defendants at the bottom of page 76 and the top of page 77 of their post-trial brief, in an attempt to show that the market price of the Du Pont stock received varied under the collar to the same degree as did the earnings and the dividends on the stock received, are grossly misleading. Although, as stated in the Remington defendants' brief, and as shown at D.X. 29 at § 10012, the potential range in dividends to be received (based upon Du Pont's Industrial Department's projections for 1979) throughout the collar range was limited to $1.55 to $1.73, the document (at § 10012) shows that the change in the dividends Remington shareholders would obtain by reason of the merger could vary from 3.3% to 15.3%, i.e., a variation of nearly 500%. Similarly, while, as defendants point out, the earnings (based upon Du Pont's Industrial Department's projections for 1979) could vary throughout the collar range from $3.09 to $3.46, the change could vary from -7.8% to +3.3%, a variation of approximately 300%. The document shows the change variations of book value, earnings and dividends are of similar magnitudes for projected years other than 1979.

The entire basis of defendants' argument that earnings, dividends and book value received on the exchange indicate the fairness of the exchange, is based upon their

contention that, in a stock for stock transaction, a comparison of the stock received with that surrendered must be made. Thus, it is the comparative figures which are pertinent to any consideration of earnings, dividends, book value and the like, not the figures cited by the defendants. The contention that a meaningful valuation of the transaction was or could have been made, based upon comparative figures which were variable by hundreds of percentage points, is ludicrous.

C. Salomon And The Special Committee Achieved Nothing From Du Pont Through Their "Negotiations" That Du Pont Was Not Already Poised To Provide

As shown in plaintiff's principal memorandum, Salomon and the Special Committee could not and did not effectively negotiate with Du Pont for a higher price since they had not determined Remington's worth and, therefore, could not seek a price commensurate with its value; were therefore constrained to accept a nominal increase in the exchange ratio from .52 to .55; and were primarily interested in fixing the market price of the Du Pont stock to be received so as to avoid criticism which might arise if the value of the consideration decreased by virtue of a drop in Du Pont's market price. In defendants' post-trial briefs, it is contended that these results were achieved through hard fought negotiations and concessions squeezed out by Salomon Brothers and the Special Committee. The evidence, however, is to the contrary.

PX 77, a document from Du Pont containing the initials of William Buxbaum in the upper right hand corner, is a "draft" dated September 20, 1979 (ten days before the meeting where defendants contend the negotiations resulted in hard fought concessions from Du Pont) entitled "Alternative Approaches For Amending Remington Offer." The first item shows that a "sweetener" of the exchange ratio was contemplated, with the ratio of .54 being mentioned by way of example. The third and fourth items show that a variable exchange ratio for maintaining the consistency of the market price of the Du Pont stock to be received was also under consideration. Similarly, PX 57, a Du Pont document* dated September 28, 1979, two days before the September 30 meeting, entitled "Impact of Alternative Merger Terms of Du Pont and Remington", shows as an alternative an analysis of the "impact of 'collar' around .55 exchange ratio." Thus, the collar around a .55 exchange ratio, which Salomon and the Remington defendants claimed they managed to squeeze out of Du Pont through their hard fought negotiations, had been specifically contemplated by Du Pont prior to the meeting.

Furthermore, Du Pont considered the "sweetening" of the exchange offer and the inclusion of the collar insignificant. (Heckert Dep., p. 62.)

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* PX 57 bears the initials "FAID", which stand for the Financial Analysis and Insurance Division of Du Pont.

Far from the "no holds barred" negotiating session portrayed by the defendants, from which Salomon and the Remington defendants allegedly succeeded twice in obtaining concessions from Du Pont, the minor increase and collar had been contemplated by Du Pont and, as argued in plaintiff's principal memorandum, Salomon and the Special Committee were in no position, because of their lack of due care, to do anything but accept what Du Pont already contemplated, considered insubstantial, and was thus willing to concede. While it cannot be seriously argued that the nominal increase from .52 to .55 was a substantial increase which transformed an unfair transaction into a fair one, it must also be kept in mind that the collar too was not a one-sided benefit achieved for the shareholders. The collar protected Du Pont as well as Remington's shareholders from changes in Du Pont's market value.

The manner in which the defendants distort the evidence as to the role of the Special Committee and Salomon in obtaining the collar and the nominal increase from .52 to .55 is seen from certain false statements contained in the post-trial brief of the Remington defendants. At page 23 of their brief, the Remington defendants contend that, in response to their insistence that a collar be added, "Du Pont insisted that it had made its best offer [but that] Heckert eventually agreed to call Shapiro. . .to discuss the addition of a collar." An examination of the trial testimony cited by defendants, however, reveals (a) not that Heckert responded to

the request for a collar by stating that Du Pont had made its best offer, but that Remington requested a collar in response to the statement by Heckert that .55 was Du Pont's best offer; and (b) that Heckert agreed to recommend the requested collar to Du Pont (Tr. V, p. 105). Thus, there was no initial negative response by Du Pont to the request for a collar that the Special Committee and Salomon overcame, as defendants would have the court believe, but the collar was agreed to by Heckert as nothing over and above the .55 "best offer" already on the table.

At page 20 of the post-trial brief of the Remington defendants, it is stated that, at the September 30 meeting, Salomon "explained their analysis and the basis for their problems with the [original] proposal". However, a look at the portion of the transcript cited for that proposition shows that no analysis and basis for their "problems" with the original offer were given -- probably because no such analysis had been made and, without an evaluation of Remington, Salomon could provide no basis for complaining about the original proposal. What the transcript does show is that, after Du Pont explained why they felt that the original offer was an appropriate exchange ratio, "Salomon gave a review of some of the facts that were included in Exhibit 54" (the internal booklet utilized by Salomon containing data pertaining to the transaction) and, referring to Du Pont's explanations, stated "that we didn't see it that way." (Tr. VII, p. 48). Thus,

Salomon did not and, without an evaluation of Remington, could not provide counter analysis to Du Pont, but countered merely with an ineffective bald statement as to their ostensible conclusion, i.e., "we [do not] see it that way". Similarly, at page 22 of the post-trial brief of the Remington defendants, it is contended that, at the September 30 meeting, Morgan Stanley "made a presentation in support of the .52 ratio, followed by a discussion by Salomon Brothers of the committee's reasons for rejecting the proposal". The trial transcript portion cited, however, does not mention a discussion by Salomon of the committee's reasons for rejecting the proposal, but merely that "Jay Higgins [of Salomon] gave a brief explanation of the Special Committee's position." (Tr. VIII, p. 52.) Obviously, anything more detailed and persuasive by Salomon would have been impossible since it did not have a dollar value of the company in mind.

D. The Defendants Did Not Refute The Evidence That The Special Committee And The Remington Board Approved The Proposal With No Explanation As To The Basis For Salomon's Opinion Of Fairness, Other Than For Brief Oral Discussion On The Day The Proposal Was Approved.

At pages 53 through 55 of plaintiff's principal memorandum, it is shown that the Special Committee approved the proposal with only a brief oral explanation from Salomon as to the basis of Salomon's fairness opinion, and that explanation was provided on the day that the proposal was approved. The Remington defendants seek to refute this, but have failed.

At page 14 of the post-trial brief of the Remington defendants, it is pointed out that Dixon testified as to various meetings with Salomon where the "scope of the activities that Salomon Brothers was undertaking" was discussed. Apprisal of the scope of Salomon's activities, however, was not an explanation of the basis for its opinion that the proposed transaction was fair.

At page 25 of the post-trial brief of the Remington defendants, a review with the Special Committee by Salomon of "its analysis of the revised merger proposal" in the morning of October 2, and discussions thereon during the September 30 meeting is referred to. Those analyses, however, and the discussions with respect thereto, were not of Salomon's opinion that the transaction was fair. They were for the purpose of defining and clarifying how the collar would work. See Petitioner's principal brief at page 54.

In an attempt to make it appear that discussions between the Special Committee and Salomon during the September 30 meeting extensively involved the basis of the fairness of the offer, rather than merely the manner in which the collar would work, a portion of Dixon's trial testimony is quoted (page 50-51 of the post-trial brief of the Remington defendants) wherein Dixon stated that the committee "evaluated the other factors". However, in that quoted testimony Dixon conceded that "a major portion of the discussion" involved how the collar would work. At his earlier deposition, Dixon

testified that there was no discussion with Salomon as to the basis of their opinion until after September 30:

> Question: Did you at some time have discussions with Salomon Brothers as to what factors went into a consideration of fairness?
>
> Dixon: After the September 30th meetings, Salomon Brothers made a presentation to us, and explained how they arrived at a fairness opinion for the offer that went out in the proxy.
>
> Question: Is that the only such discussion that you recall with Salomon Brothers concerning the basis for arriving at a fairness opinion?"
>
> Answer: That's to my remembrance, yes. (Dixon Dep. p.86 L25-p. 87 L11).

Dixon later testified that the discussion was "after September 30" (Dixon Dep., p. 115, L6).

To the extent that Dixon's trial testimony differs from his earlier deposition testimony, his earlier deposition testimony has greater credibility. On at least two other occasions during the trial Dixon's trial testimony differed, apparently untruthfully, from his earlier deposition testimony. First, upon questioning from the court, Dixon testified that Salomon advised the Special Committee that $22.08 was included within a fair range of value for Remington (Tr. V, 5/13/88, p. 156). However, not only did Dixon previously testify directly to the contrary during his deposition, but Zimmerman testified that Salomon never determined such a price. See pp. 58-59 of plaintiff's principal memorandum. Second, Dixon tried to contradict his

prior deposition testimony that he was not aware of a meeting held between Salomon and Morgan Stanley, contending that he testified incorrectly at his deposition because he had been unfairly badgered thereat. However, as brought out at the trial, Dixon had an opportunity to and did make corrections to his deposition transcript, when any pressures which might have been upon him during the taking of the deposition had been removed, but did not change the deposition testimony in question. (Tr. V, p. 133-139; Dixon Dep., p.54 L21-p. 55, L14, p. 56, L20-p.57, L12). Accordingly, trial testimony of Dixon contrary to his earlier deposition testimony can have no credibility.

E. The Defendants Did Not Refute The Evidence That The Special Committee Failed To Exercise Its Own Judgment As To The Fairness Of The Transaction, But Sought Merely To Obtain A Favorable Opinion From An Investment Advisor And Then Relegated The Decision To The Minority Remington Shareholders.

As shown at pages 46-48 of plaintiff's principal memorandum, the evidence shows that the members of the Special Committee conceived their role as one of obtaining a favorable opinion from an investment advisor on the transaction, and then passing the decision on to the Remington minority shareholders, rather than making a business judgment on the transaction themselves. The defendants argue, however, that such is inconsistent with the fact that the Special Committee did not allow the Remington minority stockholders to vote on the

original .52 ratio, but had a meeting with Du Pont resulting in the nominal increase to a .55 ratio and a collar which provided a potential benefit to both Du Pont and the Remington minority shareholders. As shown below, what the Special Committee did is entirely consistent with their role as a procurer of a favorable investment advisor opinion.

While Salomon did not determine the worth of Remington and, therefore, had no strong view as to the adequacy of the magnitude of the exchange ratio, Salomon was clearly disturbed by the specter of a fall in the market price of Du Pont stock rendering the resulting consideration below that intended by Morgan Stanley and Du Pont. Accordingly, Salomon (1) told the Special Committee that it would have difficulty in rendering a fairness opinion as to the original fixed ratio proposal, (2) without even advising the Special Committee met with and apprised Morgan Stanley of the problem, and (3) rendered a fairness opinion with only a nominal increase in the exchange ratio and the collar in place. Thus, the Special Committee did not choose to negotiate with Du Pont so as to obtain a better deal, but was constrained to meet with Du Pont to obtain the collar in order to procure the fairness opinion from its investment advisor.

The events at the October 30 meeting between the Special Committee and Salomon, which occurred when the market price of Du Pont stock had fallen below the collar range after Remington had approved the proposal, is also consistent with

the role undertaken by the Special Committee to procure a favorable opinion from an investment advisor. At that meeting the Special Committee inquired as to whether or not Salomon would still render a fairness opinion notwithstanding that the market price of Du Pont stock had fallen below the collar. As the Remington defendants themselves point out, on page 29 of their post-trial memorandum, Stott explained that the purpose of the meeting was to "see whether Salomon still felt this was a fair offer" in light of the drops in the market, and Dixon stated that "we wanted to reassure ourselves that Salomon would have either the same opinion or change their opinion." Thus, the Special Committee did not meet on October 30 with Salomon for the purpose of re-examining the fairness of the transaction but merely to reassure themselves that the fairness opinion of the investment advisor was still in place, i.e., that they had fulfilled their perceived function of obtaining such opinion.

F. Defendants' Version Of The Testimony Concerning The Special Committee's Lack Of Knowledge Of The September 25 Meeting Between Salomon And Morgan Stanley Is Incorrect.

At pages 62-63 of plaintiff's principal memorandum, it is shown that Salomon met with Morgan Stanley after advising the Special Committee that it would have difficulty in opining that the original proposal was fair, and that Stott and Dixon had testified in their depositions that they were unaware of that meeting.

The Remington defendants, however, incorrectly state that they both testified in their deposition that they merely did not recall being aware of the meeting. As shown by the testimony itself and, with respect to Dixon, by his own interpretation of his testimony, Stott and Dixon testified that, to the best of their knowledge, they did not know about the meeting.

Stott was asked:

> Question: Were you aware of the meeting on September 25, 1979 between representatives of Morgan Stanley and representatives of Salomon Brothers?. . .
>
> Answer: I don't think I knew about it. I don't remember it. (Stott Dep. 104.)

When Dixon was asked at his deposition whether anyone from Salomon Brothers had given any preliminary conclusions to Morgan Stanley concerning the original proposal, Scott answered

> I have no recollection of such. I do not know. (Dixon Dep. 55.)

At trial, Dixon himself construed his above-quoted testimony as being contrary to his assertion at the trial that he knew about the meeting. (Tr. V, p. 134.)

As seen from the foregoing, the preponderance of credible evidence shows that the Special Committee was unaware of Salomon's meeting with Morgan Stanley. This is but one example of the inattentiveness of the Special Committee, of its lack of initiative in seeking an improved offer, and of its complete abdication to Salomon Brothers of its duties in connection with this transaction.

G. The Defendants Did Not Refute The Evidence That The Special Committee Ignored Unfavorable Comments Received From Investment Advisors, Shareholders and Their Brokers, And Value Line.

As shown in plaintiff's principal memorandum, the Special Committee received unanimous and vehement unfavorable reaction and comments to the proposal from prospective investment advisors, Remington shareholders and their brokers, and an original Value Line report. It was also shown that the Special Committee simply passed these matters on to Salomon and did not make any inquiries of Salomon with respect thereto, and, to the extent that the matters were discussed among the members of the Special Committee at all, they were discussed only in connection with the Special Committee's view that the Remington minority shareholders would be able to decide whether or not the transaction was fair. See plaintiff's principal memorandum, pp. 48-53. Not only was the Special Committee lax in failing to make inquiry of Salomon or otherwise as to the matters contained in the unfavorable reports and comments, but those reports and comments should have served to assure that the Special Committee would inquire diligently into any fairness opinion eventually provided to them instead of blindly accepting Salomon's stated conclusion as to fairness. The defendants, however, misstate the record in an attempt to soften the harshness of this evidence of their wrongdoing.

At page 48 of the post-trial memorandum of the Remington defendants, it is stated that Stott testified he was unable to recall whether he discussed the specific unfavorable comments by the shareholders and their brokers. The record reveals, however, that Stott did not merely say that he did not recall, but that he did not have such discussions. As to whether he discussed with Salomon the shareholders' comments as to price earnings multiples, Stott testified, "I don't think so." (Tr. IV, p. 169). When asked whether Salomon made any comments to him on that topic, Stott testified "They didn't comment on this specifically, no, but ... " (Tr. IV, p. 170). When asked whether he made any subsequent inquiries of Salomon as to the comments in the memorandum related to book value, Stott testified "I don't remember if I did. I doubt it though." (Tr. IV, p. 172). When asked whether he discussed the comments with respect to book value with Salomon, Stott testified "Well, I didn't. . . " (Tr. IV, p. 173). When asked whether he asked Salomon about the comments concerning recent market value performance, Stott testified "I did not, no. I sent them the document. Maybe that will settle it." (Tr. IV, p. 197). Thus, contrary to what the defendants would have the court believe, Stott remembered very well that he did not discuss the comments made by the shareholders and their brokers with Salomon, but merely passed them on to Salomon.

The Remington defendants (at p. 48) make the ludicrous assertion that, with the assistance of Salomon, "the Committee examined the fairness of the transaction with respect to each

of the subject matters raised by the stockholders." However, the testimony clearly shows that Stott and the other members of the Committee did nothing but pass the memorandum on to Salomon. See Tr. IV, p. 175-20, p. 197. Indeed, at one point Stott testified "All we did with this was send it to Salomon. We did not discuss it with Salomon." (Tr. IV, p. 33.) Moreover, Stott testified that he had no opinion one way or another as to any of the comments in the memorandum expressing the negative views of the Remington shareholders and their brokers. (Stott Dep. pp. 174-175.) Since Stott and the Committee did nothing but pass the document on to Salomon, and Stott had no views whatsoever as to any of the comments on the memorandum, it is clear that he and the Committee, contrary to what the defendants assert, did not, with the assistance of Salomon, examine the fairness of the transaction with respect to each of the matters raised by the stockholders.

REPLY TO MATTERS PERTAINING TO THE EVALUATION OF REMINGTON BY PLAINTIFFS' EXPERT, NATHAN BELFER

A. Belfer's Examination Of The Market Price Of The Du Pont Stock As The Determinant Of Value Received By The Remington Shareholders.

Much of the defendants' attack on Belfer's evaluation consists of their contention that Belfer's analysis is critically flawed because he compared the intrinsic value of Remington with only the market price of the Du Pont stock, but

ignored the value of the "long term" position of a Remington stockholder who continued to hold the Du Pont stock received. However, as shown above and in plaintiff's principal memorandum, because of the collar the consideration to the minority Remington shareholders was defined by the market price of the Du Pont stock. Moreover, as Belfer testified, the market price of Du Pont stock resulted from an efficient market and accurately reflected the value of the stock. (Tr. I, 5/9/88, pp. 80-81.)

The defendants' reliance upon Sterling v. Mayflower, Del. Supr. 93 A.2d 107 (1952), and Rosenblatt v. Getty Oil Co., Del. Ch. C.A. No. 5278, Brown C. (1983), aff'd Del. Supr. 493 A.2d 929 (1985), is misplaced. First, Sterling and Rosenblatt both involved stock for stock mergers where no collar was involved which varied the ratio and fixed the market price of the stock received. Thus, those cases are no authority whatsoever as to the propriety of equating the value of the consideration to the market price of the stock received where, as here, a variable ratio is involved. Second, what was rejected in Sterling and Rosenblatt was a comparison of the market value of the stock received with only the liquidation value of the stock surrendered. That, the Sterling court explained, was an improper comparison because liquidation value is not necessarily comparable to market price and does not necessarily equate to intrinsic value. Belfer, on the other hand, did not rely simply on liquidation or asset value of

Remington to ascertain its value, but looked at everything meaningful, i.e., discounted cash flow, asset value, price earnings ratios, and third party offers.

While the foregoing and the materials set forth in plaintiff's principal memorandum refute defendants' attacks on Belfer's evaluation, a few further specific comments with respect to defendants' criticisms of particular analyses performed by Belfer are in order.

B. Matters Pertaining To Belfer's Discounted Cash Flow Analysis

Because much of defendants' criticism of Belfer's discounted cash flow analysis consists of their attempt to minimize the importance of a discounted cash flow analysis performed by Gerald Brunner of Du Pont (PX 3 & P.X 17), which is consistent with and agrees with Belfer's, it must be emphasized that Belfer did not depend upon Mr. Brunner's work, but independently performed his own discounted cash flow analysis. The Brunner analysis was utilized by Belfer only for confirmation and, so as to be as conservative, as the basis for reducing the expected earnings growth of the company from the 10% growth Belfer projected to the 8% growth utilized by Mr. Brunner. Through Belfer's own analysis and review of materials, he determined that (1) the appropriate growth rate was 10% (and then reduced it to assure a conservative result as stated above), (2) the appropriate long-term discount rate was 12%, and (3) the appropriate dividend pay-out ratio was 45%,

based on dividend pay-outs of the company. Thus, even without reference to Brunner's analysis, the discounted cash flow analysis performed by Belfer is substantial evidence of the value of Remington and was properly utilized by him in reaching his overall conclusion.

In any event, the analysis performed by Brunner is, of course, significant. As shown in plaintiff's principal memorandum, Brunner was asked to perform the analysis and was provided with the parameters he utilized therein by Du Pont executive officers. Despite the evidence that William Buxbaum believed that 12% was too low a discount rate, and 15% was appropriate, Du Pont nevertheless at the time continued to use, on a company-wide basis, 12% as its cost of capital (Buxbaum Dep., pp. 180-181; Tr. III, 5/11/88, p. 63). Thus, if Mr. Buxbaum thought 12% was too low, both Du Pont, and by reason of his own independent study, Belfer, disagreed with him.

The defendants' contention that Belfer utilized the cost of capital to Du Pont, but should have used the cost of capital to Remington, is untenable. Belfer utilized the cost of capital to a likely purchaser of the minority interest in Remington, i.e., "Du Pont or some other comparable large company" because "they would have the financial ability to make such an acquisition." The cost of capital to any such comparable large company, including Du Pont, Belfer testified, would be approximately the same. (Tr. I, 5/9/88, p. 221). Defendants' contention that the cost of capital to Remington

has relevance to a discounted cash flow analysis of Remington stock is at odds with the purpose and significance of such analysis.

A discounted cash flow analysis provides the value of the expected future cash proceeds from an investment to an investor. The discount rate is used in the analysis to ascertain the present value of the future cash flow to the investor. Thus, the pertinent discount rate is the cost of capital to the investor. The cost of capital to the issuer of the investment, Remington in the instant action, is irrelevant.

The defendants' reliance upon Weinberger v. U.O.P., Del. Ch. C.A. No. 5462 slip op. at 18-19, Brown, C. (Jan. 1985), for support of its bizarre contention that the cost of capital to the acquired corporation is appropriate in a discounted cash flow analysis, rather than the cost of capital to a purchaser, is misplaced. The court in Weinberger did not say that the cost of capital rate must be that of the acquired company and not the potential purchaser. The court merely had difficulty with the approach utilized there of determining value from the standpoint of what the acquiring company could do with the acquired company, once it obtained it, based on liberties the acquiring company could take as 100% owner to cause changes in the cash flow. Moreover, despite the Court's difficulties with that particular analysis, it was considered relevant by the Court as one of the factors bearing on value. In the instant action, Belfer did not look at the cash flow

from the point of view of the benefits the acquiring corporation would obtain by reason of changes it could make through its 100% ownership. He evaluated the value of the cash flow solely from the point of view of the cash flow generated from Remington, without taking into account any changes resulting from the acquisition, with a discount rate based upon the cost of capital to a potential acquirer, such as Du Pont.

C. Matters Pertaining To Belfer's Price Earnings Ratio Analysis.

The defendants criticize the manner in which Belfer arrived at a price earnings ratio of at least 7 to 8, contending that he utilized only Coleman and Browning as comparables, and that Browning was acquired at a 21 x earnings ratio, i.e., far higher than that arrived at by Belfer. On the other hand, the defendants also criticize Belfer because he had testified in his deposition that he considered price earnings multiples of companies having businesses far afield from that of Remington, i.e., American Machine and Foundery, Murray Ohio, Resorts International and Playboy.

What Belfer did was to start by examining a wide range of companies, having at least one common denominator with Remington. As he explained, AMF, Brunswick, Coleman and Murray Ohio, all have the common denominator with Remington of being in the outdoor sporting activity. (Tr. I, 5/9/88, p. 220). Resorts International, and Playboy, while admittedly further afield, have the common denominator of being in the

entertainment industry. However, after Belfer looked at the price earnings ratios of these companies, he considered the degree of similarity they had to Remington which determined how closely he studied them and how they entered into his judgment as to an appropriate price earnings ratio. He testified:

> I tried to find companies that were comparable. In this case I found only one company that was reasonably comparable and that was Browning. So in the case of Browning, I did give other comparisons such as growth and sales, profitability and so forth. I made a closer evaluation because I felt that was more comparable. In the case of these other companies, like AMF, Brunswick, Coleman, Murray Ohio, the common denominator was that they were all engaged in outdoor sporting activity. So I saw no need to fine tune it so to speak. All I was interested in was something that was reasonably comparable, and then I made my own judgment as to the proper price earnings ratio for Remington. Tr. I, 5/9/88, pp. 219-220.

Belfer did not utilize Playboy and Resorts at all after looking at their price earnings ratio:

> I mentioned Playboy and also Resorts International, but I did not utilize them. . .I just mentioned those two companies as being sort of in the recreational field."

Coleman, on the other hand, Belfer thought was a good indicator because "entirely in the outdoor sporting goods equipment [business], catering to the outdoor market, just as Remington does." (Tr. I, 5/9/88, p. 71.)

Thus, Belfer examined a wide field, gave appropriate attention to the various companies in accordance with the degree of their comparability, relied most on the companies which were most similar to Remington (Browning and in certain

respects, Coleman) and utilized his judgment based on all his observations, including historic price earnings ratios of Remington, to arrive at a judgment as to the appropriate price earnings ratio. Clearly, such a method is reasonable and an appropriate exercise of expertise.*

Defendants also criticized Belfer for not utilizing Sturm Ruger as a comparable. However, as shown at page 43 of plaintiff's principal memorandum, Belfer did look at and consider Sturm Ruger, but found its business to be inferior to and its market more limited than Remington's and, therefore, did not adopt Sturm Ruger's price earnings ratio.

Belfer's conclusion that at least 7 to 8 times earnings was an appropriate price earnings ratio is confirmed by the fact that Du Pont, in its analysis, utilized similar ratios. PX16, a document consisting of various analysis performed internally at Du Pont, shows analysis which utilize price range ratios of seven and six times earnings. Significantly, a notation at the bottom of the page states:

> I've used <u>seven</u> PE in the <u>first</u> case for comparability with Friday's base. . .

Another analysis performed by Brunner, PX22, contains a notation at the bottom of the first page explaining that it is based upon a <u>seven</u> price earnings ratio.

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* While the takeover of Browning provided support for a conclusion that Remington's proper P/E ratio should be 21 times earnings, it also clearly provided comfort to Belfer for his judgment that at <u>least</u> a 7 to 8 times ratio was appropriate.

Even Salomon tended to support the appropriateness of the seven price earnings ratio arrived at by Belfer. In the discounted cash flow analysis performed by Salomon (Exhibit I-I of DX 54) price earnings ratios of 4, 6, 8, and 10 were utilized. The median of those price earnings ratios is 7.

The defendants also contend Belfer's utilization of future anticipated earnings, rather than current earnings, was improper. This is refuted in plaintiff's principal memorandum, at pages 40-42. The only comments of defendants on the question that need be addressed here are the ludicrous statements (1) that Belfer was inconsistent because he utilized future earnings at the same time he utilized historic price earnings ratios, and (2) that the future earnings utilized by Belfer in his price earnings analysis indicate a higher earnings growth rate than the 8% growth rate Belfer utilized in his discounted cash flow analysis.

The manner in which price earnings analysis is performed is to multiply the anticipated earnings by current price earnings ratios. That is what Belfer did. Anticipated earnings are commonly projected, future price earnings ratios are not. Moreover, Belfer did not simply look at the historical price earnings ratios of Remington, but at price earnings ratios of other comparables as well to arrive at a reasonable conclusion.

As to the fact that the earnings utilized in Belfer's price earnings ratio provided for greater earnings growth than the 8% growth rate utilized in the discounted cash flow

analysis, one need only look at the distinction between the functions of the two analysis. Discounted cash flow analysis pertains to a stream of cash flow into the distant future and, therefore, growth rate must be normalized over the long term. Such a normalized long term growth rate, Belfer observed, was 10% and he reduced it to 8%. On the other hand, price earnings ratio analysis ascertains value based upon earnings anticipated in the immediate future, i.e. the following year. Thus, the difference in the growth rates indicated in the two different analyses by Belfer reflects his recognition of the difference between earnings expectations for the immediately succeeding year and over the long run.

D. Matters Pertaining To Belfer's Rejection Of The Market Price Of Remington As An Indicator Of Its Intrinsic Value.

At pages 15 through 22 of plaintiff's principal memoranda, it is shown that the market price of Remington was not an indicator of its value and that the market price was depressed. Defendants contend, however, that Belfer should have looked at the premiums paid in other parent-subsidiary mergers because "in most, if not all parent-subsidiary mergers it would be expected under Mr. Belfer's analysis that the level of institutional interest would be lower than in a stock where control is disbursed." See post-trial brief of the Du Pont defendants, p. 38. Defendants also contend that the depressed market price of Remington stock was a fact which existed and

affected its value, and which the members of the class benefited from in that they purchased at a depressed price. Both of these contentions, however, are without merit.

An examination of the premiums paid in other parent-subsidiary mergers was not deemed pertinent by Belfer because, contrary to defendants' argument, it was not the element of control over the subsidiary which Belfer and Zimmerman testified depressed and rendered the market price an unreliable indicator of value. As Belfer and Zimmerman testified, the market price was depressed and an unreliable indicator because there was so little capital involved in the public float and because trading was so thin. (Tr. I, 5/9/88, p. 36-38; PX 52, p. 4). For example, suppose a company like General Motors was a 70% subsidiary, the market price of the remaining 30% of the stock might well indicate its true value because there would be sufficient capital in that 30% for institutional interest and the 30% might well be actively traded. The public float of Remington, however, involved only a small amount of capital, insufficient to attract substantial institutional interest. Moreover, the Remington stock was thinly traded (to the extent that a trade by a single minority shareholder could establish the market price), and financial analysts did not follow the stock so as to encourage purchasing thereof.

The contention that the depressed condition of the market price of Remington stock affected its true value, and that the class benefited therefrom by having purchased at

depressed prices, is also fallacious. Minority shareholders are entitled to the intrinsic value of their shares upon a merger, regardless of what they bought the stock for, and when market price does not reflect the intrinsic value, market price cannot be relied upon in ascertaining a fair merger price.

In Smith v. Van Gorkom, Del. Supr. 488 A.2d 858 (1985), the Court observed:

> "The record is clear that before September 20, Van Gorkom and other members of Trans Union's board knew that the market had consistently undervalued the worth of Trans Union's stock, . . .Yet,. . . Trans Union's board apparently believed that the market stock price accurately reflected the value of the company for the purpose of determining the adequacy of the premium for its sale. (488 A.2d at 876.)

In Van Gorkom, the defendants did disclose that the market price was depressed and did not reflect the inherent value of the company, yet the court still found the directors liable for not disclosing:

> [I]ts failure to assess the premium offered in terms of other relevant valuation techniques, thereby rendering questionable its determination as to the substantiality of the premium over an admittedly depressed stock market price. (488 A.2d at 891.)

The foregoing shows that the Van Gorkom court clearly rejected any contention that value based upon a premium over a depressed market price was proper. Moreover, in the instant action, where, unlike Van Gorkom, there was not even disclosure that the market price was depressed, a fortiori there was failure to disclose and violation of duty.

In Beerly v. Department of Treasury, 768 F.2d 942 (7th Cir. 1985), cert. denied, 475 U.S. 1010 (1986), the Court commented on the impropriety of utilizing market price for determining a fair merger price where, as in the instant action, the market price is not a true indicator of value and may be depressed:

> It is true that when stock is traded infrequently, past sales may not be a reliable guide to current value, because they impound valuations by only a few buyers and sellers...
>
> * * *
>
> When a stock is thinly traded, so that its market value is not a reliable index of its true value, controlling shareholders may be tempted at a time when the market valuation is unreasonably low to force minority shareholders to give up their shares in exchange for the market value of the shares which by hypothesis is less than their true value. (768 F.2d @ 946).

The Court then specifically condoned the exclusion of such a market price in an evaluation:

> The Comptroller was generous in giving no weight at all to the (low) market value...(768 F.2d @ 946).

E. Matters Pertaining To Belfer's Adjusted Book Value Analysis

Virtually all of defendants' contentions concerning Belfer's adjusted book value analysis are addressed in plaintiff's principal memorandum. Only the contentions by defendant that Belfer should have adjusted Du Pont's book value as well as Remington's, and that Belfer failed to consider that Remington Farms was a valuable asset of Remington and, thus, could not have been liquidated, need be commented upon here.

Belfer did not adjust the book value of Du Pont because, as shown above and in plaintiff's principal memorandum, the value of the consideration received by the minority Remington shareholders was the market price of the Du Pont stock received. Thus, book value, adjusted or otherwise, of Du Pont was irrelevant.

Belfer did not consider whether Remington Farms was being utilized by Remington because, regardless of whether it was being utilized, the property had a certain value. The particular analysis in question pertained to the value of all assets of Remington, not just of disposable assets.

DU PONT HAS NOT SHOWN IT ACTED FAIRLY TO THE REMINGTON SHAREHOLDERS, NOR HAS IT REFUTED THE SHOWING THAT IT ACTED UNFAIRLY.

In plaintiff's principal memorandum, it is shown that, while establishing procedures for an appearance of compliance with their duties, in actuality Du Pont did not act with fairness toward the minority shareholders of Remington. Every opportunity was taken to promulgate and justify an unfairly low offering price for the Remington shares; Du Pont knew and took advantage of the close relationship with and dominance over Remington management and knew that the proposals would not, in substance, be rejected; Du Pont announced the price to be offered to preclude a third party bid which might require an increase in the offering price; and Du Pont failed to disclose the various breaches of duty so that the Remington minority

shareholders could effectively exercise their vote to reject the offer. In its post-trial brief, however, Du Pont has raised the question as to where the burden of proof lies because Du Pont allegedly "disenfranchised" itself by allowing the transaction to be approved by a majority of the minority of the Remington shareholders. Du Pont has also set forth misleading or erroneous factual statements and fallacious arguments at various places in its post-trial brief. Some of the more egregious of these aspects will be addressed below.

A. The Burden Of Proof And The Business Judgment Rule With Respect To Du Pont

Du Pont contends that the plaintiff has the burden of proof with respect to showing that Du Pont violated its duty of fairness as a majority shareholder of the company because Du Pont relinquished control by permitting the merger to be approved by a majority of the minority of the Remington shareholders. While we do not believe that the issue as to burden of proof is critical in this particular case because we believe that, assuming that plaintiff has the burden of proof, she has clearly met it, Du Pont's contention is erroneous. Approval by a majority of minority shareholders in a merger case is meaningless where the minority has not been informed of the controlling shareholder's violations of duty. Weinberger v. UOP, Inc., Del. Supr., 457 A.2d 701 at 712. ("Under the circumstances [where the minority stockholders were not informed], an approval by a majority of the minority was

meaningless"); Harman v. Masoneilan International, Inc., Del. Supr., 442 A.2d 487, 492 (1985) ("We conclude that defendants' reliance on the minority shareholders' approval of the merger does not warrant dismissal -- given plaintiff's allegation that the public shareholders' approving vote was coerced through a materially false and misleading proxy statement."). In the instant action, as shown at pages 82-83 of plaintiff's principal memorandum, the minority shareholders were not informed of the defendants' violations. Therefore, the approval by a majority of the minority was meaningless and, as stated in Weinberger v. UOP, Inc.:

> When directors of a Delaware corporation are on both sides of a transaction, they are required to demonstrate their utmost good faith and most scrupulous inherent fairness of the bargain. 457 A.2d at 710.

Moreover, as shown in plaintiff's principal memorandum, Du Pont did utilize its majority voting control to facilitate approval of the merger. Only a majority of the votes of the minority shareholders were required for approval. If the minority shares were held by an independent company without the presence of Du Pont, an outsider seeking to take over the company would be required to obtain two-thirds of that vote, not a majority. Thus, by force of Du Pont's stock position Du Pont made it easier for itself to acquire the minority shares than it would be for an outsider and, therefore, sat on both sides of the transaction. Imposition of the burden of proof upon Du Pont is the result.

B. Misleading or Erroneous Statements and Fallacious Arguments in the Post-Trial Brief of the Du Pont Defendants.

At page 6 of Du Pont's post-trial memorandum it is stated that Du Pont had better growth prospects than Remington. This was not true. As shown in PX 42, it was only perceived that Du Pont's growth prospects were better. See Item 4, page 4 of PX 42. In actuality, Remington's earnings were projected to grow at a faster rate than were Du Pont's. See PX 47 at page 9 (Remington's projected earnings growth 15%) compared to PX 47 at page 13 (Du Pont's projected earnings growth 5.28%).

While Du Pont's post-trial brief, at page 6, sets forth the negative aspects of Remington observed by Morgan Stanley, it does not set forth the positive aspects. In fact, Morgan Stanley found that Remington "is the dominant company in the domestic sporting firearms market with an estimate of 34% share of the total 1978 dollars" (PX 47, p. 5); while shipments in the firearms industry in general have experienced little growth, Remington's shipment growth in rifles has continued and estimates are for continued growth in fire rifles and shotguns and "although market conditions did not improve substantially in 1978 [Remington's] unit value of ammunition sales increased over the 1977 level and its domestic market share increased from an estimated 36% in 1977 to 40% in 1978" (PX 47, p.7); and Remington's management forecasts that it will

strengthen its market position with continued growth and profitability. (PX 47, p. 10).

At page 14 of Du Pont's brief, it is pointed out that there was evidence that some of the Du Pont directors thought the proposal was "rich". However, the evidence shows that other Du Pont directors thought "we might be cutting it a bit thin". See PX 25.

At pages 21 through 22 of Du Pont's reply memorandum, it is stated that the Remington stockholders, as a result of the merger, received an increase in dividend yield of 13 cents or 9%, an increase in earnings per share of 39 cents or 12%, and a decrease in book value of 11%. However, the increases existed only because the market value of the Du Pont stock had decreased and, pursuant to the collar, the number of shares of Du Pont received increased. The value of the consideration received, however, remained at the same low level. Moreover, the lack of good faith on the part of Du Pont is illustrated by the fact that they originally proposed a transaction which would have resulted in a dilution of dividends and earnings (PX 47, p. 19), justified only by a premium over a depressed and inaccurate market price. The increase in the exchange ratio of the ultimate proposal was nominal, and the dilution of earnings and dividends was avoided only because the market price of the Du Pont stock fell.

At page 30 of Du Pont's brief, Du Pont attempts to explain why Morgan Stanley performed discounted cash flow analysis by utilizing management's lower projected sales growth

together with the lower historical profit margins based on expenditures which had been required to achieve the higher historic sales growth. Du Pont states that "Morgan Stanley did not accept Remington's projected improvements in marketing margins [and] thought it unlikely that Remington could achieve improved productivity at the same time that it achieved sales increases, which the company rested on market shares." However, as shown in PX 47, p. 9, the projected sales growth of 10% represented a decrease from the historic sales growth of 12%. Thus, there were no "projected improvements" justifying Morgan Stanley's use of the lower historic profit margins. The "improvements" had been made and resulted in the higher historic growth.

As explained in plaintiff's principal memorandum, at pages 65-66 and pages 29-30 (to which the court is respectfully referred for a full explanation of the unfair manner in which Morgan Stanley skewed its discounted cash flow analysis) the lower historical profit margins were based on expenditures which had accompanied the higher historic sales growth and had no applicability to the reduced sales growth projected by management and combined unfairly by Morgan Stanley with the historic lower profit margins. If Morgan Stanley did not believe it could utilize the projected operating relationship between sales and profits, logic and good faith would have led to the use of historic profit margins with historic sales growth; not to the use of the lower historic profit margins with the lower projected sales growth.

At page 44 of Du Pont's brief, it is argued that Du Pont's failure to disclose to Remington or Salomon Du Pont's internal discounted cash flow analysis, showing a value of Remington of $36.38 per share, was not a breach of duty because it was not based on any confidential information known only to Du Pont. However, the discount rate of 12% utilized therefore was based upon the cost of capital to Du Pont internally recognized by Du Pont as 12%. Neither Remington nor Salomon was advised that such was the cost of capital to Du Pont, as established internally within Du Pont and, therefore, were deprived of critical information available to the parent.

At Note 11 of page 45 of Du Pont's memorandum, it is argued that D.X. 52, a memoradum from Du Pont's Finance Department received by Remington, discloses the information contained in Du Pont's internal discounted cash flow analysis in that it states that "comparison of the net proceeds from sale required to equate with the present value of projected dividend flow from Remington stock indicates a selling price considerably in excess of what we might expect to obtain." (D.X. 52 at 10692). However, the document discloses nothing concerning Du Pont's internal evaluation. An examination of the pertinent portion of the document shows it explains only that because of Du Pont's tax base in the Remington stock, its sale to a third party of its interest in Remington was not likely to provide the net proceeds it would obtain from the present value of the projected dividend flow from the Remington

stock. The statement and the document reveal nothing as to what the projected dividend flow was or that it was substantially higher than the price proposed by Du Pont for the Remington stock.

BOTH THE REMINGTON DEFENDANTS AND THE DU PONT DEFENDANTS VIOLATED THEIR DUTIES TO ACT WITH CANDOR

The defendants point out that the description of the manner in which the proxy statement was misleading is contained at pages 82-83 of plaintiff's principal memorandum, under the heading "The Du Pont Defendants Violated Their Obligation To Act With Entire Fairness To The Remington Shareholders". From this, the Remington defendants speculate that it is only the Du Pont defendants, who are charged with violating the duty of candor. That is not so. As stated at page 69 of plaintiff's principal memorandum, one of the requirements of both the duty of loyalty and of fair dealing is that all germane facts be disclosed with complete candor. Lynch v. Vickers Energies Corp., Del. Supr., 383 A.2d 278, 281 (1977); Weinberger v. UOP, Inc., supra. Thus, the duty of candor pertains to the violation by the Remington defendants of their duty of loyalty, and to the violation by the Du Pont defendants of their duty of fair dealing. Moreover, because of the lack of candor, none of the wrongful acts complained of could have possibly been ratified by the shareholder vote.

The Remington defendants argue that, since a supplement to the proxy statement sent to the Remington shareholders advised them of some contentions asserted by plaintiff in her suit previously commenced in the New York Supreme Court challenging the merger, the stockholders were fully informed of the plaintiff's contentions in this case. However, examination of the supplement to the proxy statement (PX 72) shows that the description of the New York suit therein does not begin to advise of the material facts which defendants failed to disclose. The supplement says nothing about the failure by the Special Committee and the Remington defendants to exercise due care, e.g., that neither the Remington Board of Directors nor its investment advisor bothered to ascertain a dollar value of the Company it agreed to merge for between $23.24 and $25.85 per share, that the Special Committee viewed itself as a procurer of a fairness opinion from an investment advisor and relied upon the stockholders themselves to reject the transaction if unfair, and that the Special Committee and its investment advisor were in no position to negotiate for a fair price with Du Pont because they had not ascertained the value of Remington; nothing concerning Du Pont's internal calculations; nothing to suggest that Remington had an asset, Remington Farms, which had been appraised at $5,000,000; nothing about the fact that the merger price was heavily dependent upon the depressed market price of Remington stock and that Du Pont's proposal was based upon such depressed

market price; and nothing about the fact that other investment advisors had stated that the merger price was extremely low and were rejected in favor of Salomon, which provided the fairness opinion. Moreover, disclosure that allegations of wrongdoing are made in a suit are not tantamount to disclosure that the alleged wrongdoing has actually occurred. Therefore, the disclosure of the plaintiff's original suit in New York does virtually nothing to provide compliance with the defendants' duty of candor.

THE DEFENDANTS FAILED TO REFUTE THE EVIDENCE THAT THAT RICHARD HECKERT VIOLATED HIS DUTY OF LOYALTY BY AFFIRMATIVELY ACTING IN BEHALF OF DUPONT, AGAINST THE INTERESTS OF REMINGTON, IN CONNECTION WITH THE MERGER TRANSACTION

In plaintiff's principal memorandum, at pages 68-70 and 84-85, it is shown that Richard Heckert violated his duty of loyalty to Remington by acting afirmatively in behalf of Du Pont against the interests of Remington in connection with the merger transaction. In an attempt to refute plaintiff's contention in this regard, the Du Pont defendants asserts that "the evidence shows that Mr. Heckert had little involvement in the Remington transaction until the negotiating meeting at Bridgeport" and that at the meeting "he played a helpful role in bringing the two sides together on merger terms that spoke to the specific concerns that had been identified by the merger committee and its advisors" Du Pont Post-Trial Brief, p.42. The record shows the contrary on both of these facts.

PX 20 is a memorandum from Mr. Shapiro, then the chief executive officer of Du Pont, to Du Pont personnel, dated July 6, 1979 attaching a memorandum summarizing dated pertinent to the consideration of Du Pont's proposal to acquire the minority Remington shares. The memorandum, a blind copy of which was sent to Mr. Heckert, states that the matter may be discussed or questions asked of "Dick Heckert and other members of the evaluation team [who] will be available on July 9th and 10th." Thus, Mr. Heckert did not first become involved in the transaction at the negotiating session on September 30, but was one of the senior Du Pont officers involved in the formulation of the plan for Du Pont at its inception.

The trial testimony of Dixon, as to what occurred at the September 30 meeting, should dispel the contention by the Du Pont defendants that Heckert played a helpful role, as a mediator, at the meeting. Dixon testified:

> and we got to fairly late in the day a meeting with Dick Heckert and the merger committee in which Mr. Heckert pleaded the case of Du Pont very strongly, advised that that was the best offer that they could make, in which we responded that [we must have a collar].... Dick Heckert, after pleading, and I mean pleading the case for Du Pont, agreed to recommend [the collar]".

Thus, contrary to defendants' assertion that Heckert played the role of mediator, the evidence shows that Heckert pleaded the case of Du Pont strongly, represented in the negotiations after Mr. Shapiro left, and, as shown in plaintiff's principal memorandum, sided completely with Du Pont against the interests of Remington in this transaction.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in plaintiff's principal memorandum, plaintiff is entitled to judgment in her favor, and in favor of the class, as stated in plaintiff's principal memorandum.

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

EDITH CITRON, Plaintiff, v. E.I. DU PONT DE NEMOURS & CO., REMINGTON ARMS COMPANY, PHILIP H. BURDETT, JOSEPH A. DALLAS, ROBERT W. DIXON, RICHARD E. HECKERT, JOHN P. McANDREWS, ELDON M. ROBINSON, FREDERICK B. SILLIMAN and ALEXANDER L. STOTT, Defendants.	)	C.A. No. 6219

CERTIFICATE OF SERVICE

It is hereby certified that on this 14th day of October, 1988, copies of the foregoing Post-Trial Reply Brief of the Plaintiff were served by Hand Delivery on the following:

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