

*Mr. Prickett*

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

WILLIAM B. WEINBERGER,  
Plaintiff,

v.

UOP, INC., et al.,  
Defendants.

Civil Action No. 5642

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NOTICE OF MOTION

TO: William Prickett, Esquire  
Prickett, Jones, Elliott,  
Kristol & Schnee  
1310 King Street  
Wilmington, Delaware 19801  
Attorneys for Plaintiff

PLEASE TAKE NOTICE that the attached motion will be  
presented to the Chancellor on Thursday, March 17, 1983, at  
11:00 a.m.

March 7, 1983

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By

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IN AND FOR NEW CASTLE COUNTY

WILLIAM B. WEINBERGER, )  
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 Plaintiff, )  
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 v. ) Civil Action No. 5642  
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 UOP, INC., et al., )  
 )  
 Defendants. )

MOTION FOR PRELIMINARY HEARING  
TO DETERMINE APPROPRIATE STANDARDS  
TO BE CONSIDERED AT THE FAIRNESS HEARING  
ON REMAND AND TO VACATE DISCOVERY  
PENDING SUCH DETERMINATION

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1. On February 1, 1983, the Delaware Supreme Court reversed this Court's Final Judgment Order dated February 19, 1981, and remanded the action to this Court for further proceedings consistent with its Opinion. Weinberger v. UOP, Inc., Del. Supr., \_\_\_ A.2d \_\_\_ (1983) (copy of Slip Opinion attached hereto).

2. In its opinion, the Supreme Court stated:

"On remand the plaintiff will be permitted to test the fairness of the \$21 price by the standards we herein establish, in conformity with the principle applicable to an appraisal-- that fair value be determined by taking 'into account all relevant factors' [see 8 Del. C. § 262(h), supra]. In our view this includes the elements of rescissory damages if the Chancellor considers them susceptible of proof and a remedy appropriate to all the issues of fairness before him" (emphasis added).

Slip Op., pp. 30-31.

3. The defendants will show at the hearing requested herein that the elements of rescissory damages, as defined in Lynch v. Vickers Energy Corp., Del. Supr., 429 A.2d 497 (1981), are not an appropriate remedy for this Court to consider in the fairness hearing on remand of this action, because the items of nondisclosure found by the Supreme Court do not constitute such wrongdoing as should cause this Court to exercise its discretion in favor of applying the elements of rescissory damages in determining the fairness of the merger price. Defendants will further show at such hearing that under the facts and circumstances of this case, the fairness of the merger price should be determined at the fairness hearing in conformity with the principles applicable to an appraisal, as defined by the Supreme Court in Weinberger.

4. If the defendants are correct, the discovery with respect to the fairness hearing on remand, some of such discovery already having been initiated by plaintiff,\* will be limited to information which was known, or could have been ascertained at the time of the merger--May 28, 1978. On the other hand, if the elements of rescissory damages are to be considered by this Court, discovery may be relevant with respect to some period after the date of the merger, such as through the last day of the trial of this action--June 3, 1980

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\* On March 2, 1983, defendants were served by plaintiff with extensive interrogatories (Docket Entry #213), an extensive request for production (Docket Entry #211), and a notice of six depositions (Docket Entry #212).

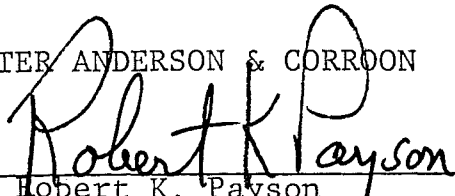
(e.g., Lynch v. Vickers Energy Corp., Del. Supr., 429 A.2d 497, 505 (1981)).

5. Unless this Court defines the appropriate standards to be applied in the fairness hearing for all parties prior to all-encompassing discovery proceedings, the parties may well engage in needless but very expensive and time-consuming discovery and retention of experts. In addition, this Court would, in all likelihood, be called upon to resolve discovery and other disputes between the parties, which disputes would be substantially obviated by an early determination as to the appropriate standards to be applied at the fairness hearing. Thus, considerations of judicial time and economy also call for the hearing requested herein.

WHEREFORE, defendants move the Court for the entry of an order determining the appropriate standards to be considered at the fairness hearing on remand of this action, vacating the presently pending discovery initiated by plaintiff, and establishing a discovery schedule with respect to the hearing requested herein.

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