Case: Weinberger v. UOP, Inc.
Interview of Grover C. Brown
Former Chancellor, Delaware Court of Chancery
Gordon, Fournaris & Mammarella, P.A.
Interviewed by: A. Thompson Bayliss, Abrams & Bayliss LLP
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MR. BAYLISS: I'm Tom Bayliss. I am here with Chancellor Grover Brown. We're here to talk about the Weinberger case. Before turning to the litigation, could you describe your practice until you joined the Court? #00:00:52#

CHANCELLOR BROWN: My practice until I joined the Court. Well, I was admitted to the Bar of the State of Delaware in 1961. And I spent the first two or three years working with my brother, who was a lawyer. Herman Brown was his name, and he was a lawyer, had a little office on The Green in Dover. And I don't know, I got a little tired of that and decided just – I'd be better off if I was on my own. So, I went down the block and rented an office and began practicing law by myself about 1963 or 1964, I guess, which I did for seven or eight years and found it very enjoyable – except I didn't make much money.

MR. BAYLISS: So, that's when you became a judge? #00:01:39#

CHANCELLOR BROWN: Well, not because of that but it was a small-town practice and, in those days, I think when I got admitted – I'm a native of Harrington, Delaware, if I should bring that in. But, so I was born in Delaware, and when I got admitted to the Bar in Dover, I think I was the fifteenth lawyer in town back then, and of the 15, five or six of them were old guys that had been around, that were just sitting, you know, counting their money and that sort of thing. And so, I was fortunate that it was a good opportunity because, when there weren't many lawyers in town, particularly who went to court, you got a lot of chance to go to court because, in those days, there was no public defender. And, any time a person was brought in and charged with a felony and was asked by the judge, "Do you want counsel?," because they had no money, and they said, "yes" – I got a lot of those appointments. And that all was happened in – the first and third Fridays of every month in those days and the Superior Court heard criminal arraignments and divorces and that sort of thing. And so, you had to go over for the criminal arraignments because you generally had somebody. But in the old courthouse in Kent County, there's big pillars – two big pillars right around the counsel table, and I used to try and hide behind a pillar. You know, I'd sit so I'd have a pillar between me and the judge. But it didn't work because the judge

knew I was there and every now and then somebody would say they needed a lawyer and Judge Storey or somebody would look around and say, “Mr. Brown, is that you behind the post?” And, “yes, Your Honor.” “I'm appointing you to represent this man.” So, yeah – it was good – in hindsight, it was a very good experience because you got to go into court, and you dealt with the judges. You had to know what you were doing. And nobody showed me because my brother didn't have the time to do that and he was too busy doing other things, and he was of the view that if I tell you how to do something, you won't remember it. If you want to know how to do it, you go figure it out yourself. So, I went to him and said, what is the writ of scire facias or something in the sheriff's office? He said you go find out. So, I think that's because he just didn't want to be bothered, but nonetheless, it was a good experience. And so, I guess for about 10 years, I spent a lot of time in court, and not on major cases, but on felony cases and things of that nature. Tried a few jury trials. Nobody showed me how to do a jury trial. You just had to go in there and figure out everything yourself. I had grown up in that kind of an environment because my parents died just before my tenth birthday, and I grew up on my own, so I was used to doing that. I spent sixth and seventh grade in a military academy in Chatham, Virginia. Got up to the bugle, learned how

to salute and do all of those things. Do what you're told, make your bed, shine your shoes, you know. And that was probably not the best thing for somebody in the sixth and seventh grade, but in hindsight, it was very beneficial, so...

MR. BAYLISS: Perfect training for a future star on the bench. #00:04:53#

CHANCELLOR BROWN: No, I don't know about that, but you learned to do what you were told and what you had to do, or you'd pay the consequences, you know, so...

MR. BAYLISS: How did you end up joining the bench? #00:05:07#

CHANCELLOR BROWN: Huh! Well, as I told you previously – basically by default. I was practicing by myself in my little office next to the theater there in Dover. And I was initially asked, at some point, to become a judge on the Family Court. It was the Juvenile Court, I think, in those days, but I forget who the governor was, but they needed somebody to appoint. The Family Court judge, who had been there for years, and whom I had spent many, many, many days with, retired. And, under the way the Delaware judicial system was set up under the Constitution back then, you always had to have a balance of Republicans and Democrats on the courts. And they had a need for a Republican. I'm a registered Republican; I have nothing in common with Republicans, I just never wanted

to be a Democrat because, in Harrington, where I grew up, the whole town was Democrat, basically, and I wasn't a joiner, so I – and my brother was a Republican and he gave me a job to start with, so, I thought I'd better register Republican. So, as a result of that, they were looking for a pigeon who was a Republican to be a Family Court judge because nobody really wanted to do that. And I said, no, I won't do it either. So, I turned it down, and they got somebody else, a young attorney, Roger Kelsey. And then, later, they enlarged the Family Court – added two judges – or they added – whatever they added, it was an extra judge they added downstate because, in those days, there was one in Kent County and one in Sussex County, and they needed a third. And then the governor sent people would get after me again, and I got thinking about it. I said, well, I don't know that I want to do this because I'd spent a lot of time in Family Court defending all sorts of things, and it wasn't what I particularly wanted to do, but I thought, you know, I'm here by myself. I don't make a lot of money. I enjoy it. I was married. I had a little girl. And, I thought, this doesn't make much sense. I think, you know, back in those days, it paid $27,000 a year, which wasn't bad back then. And I thought I'd better take this, because, if something happens to me and if I die, at least, you know, there's a pension -- take care of my wife and daughter and that sort of thing. And

I also thought, if I don't like it, I could always quit. So, I became a Family Court judge.

MR. BAYLISS: How did you end up on Chancery? #00:07:36#

CHANCELLOR BROWN: Well, I was on the Family Court for what? I guess three years – two years, something like that. In any event, it wasn't what I really wanted to do because, as I said, I was the third judge, the swing judge downstate. And there was a chief judge in Kent County and chief judge in Sussex County, and I was the guy in between, so I had to run back and forth between the counties, and you know, got most of the crappy jobs because rank has its privileges. And I had done this for a while, and then I got to thinking, you know, I don't think this is what I went to law school for because I never wanted to do it in the first place, but I didn't know how to get out of it because I didn't have a practice I could go back to. And, in those days, in Kent County, all the lawyers were sole practitioners, except for a couple. There were no firms, as such. And there came an opening on the Court of Chancery, which I actually knew nothing about other than I was a great admirer of Collins Seitz because, along the way, I had also acted as a Deputy Attorney General for the State. The Attorney General back then was a fellow named Dave Buckson, and I knew him and he got a

hold of me; made me his administrative assistant, which meant I answered his mail, basically. But, because of that, I used to have to sit in on the Board of Pardons when it met monthly, and Chancellor Seitz was also, by the Constitution, on the Board of Pardons, and I used to sit next to the Chancellor, and I had great admiration for him. He was really a fine gentleman. But, in any event, there became a vacancy because the downstate Vice Chancellor, Isaac Short, his term was up and Ike, as everybody called him, not to his face, of course, but he didn't want to be reappointed. He'd had enough. And so, you needed a downstate Vice Chancellor who, in the constitutional scheme of politics had, again, to be a Republican. Ike was a Republican, so you had to replace him with a Republican. And it was Sussex County's position, because he was of Sussex County. And, in the years before that, they had knocked down the old courthouse in Georgetown and put up the new one. It went right on The Circle. And it had nice quarters and that sort of thing. But, they still needed a Republican from Sussex County. And, in those days, people were coming over from Washington and Baltimore to the beaches and that sort of thing. And all the attorneys in Georgetown, there weren't that many, probably only twenty-something, they were all making good money on real estate settlements and that sort. And nobody wanted to give up what

they were doing to become a vice chancellor for 27, $28,000 a year, or whatever it paid. And so, but it was their position; they had dibs on it because they had the office, they had the facility, and they had the retiree. But they couldn't find a candidate. Nobody was interested. So, the Sussex County Bar Association met and ended up drafting one of their members, who was not there at the meeting to defend himself. But, they drafted him as their candidate, and his name was Jackson Dunlap – Jay Dunlap, a nice guy. Had a practice by himself. But I knew Jay because his wife was a cousin of mine. I gave her away at the wedding because her father was dead. But they drafted Jay. And I simply told the fellows in Kent County, I said, "You know there's two or three lawyers in town that if they're interested in this position, then they should have it. But, if you can't find a candidate, and you're desperate for somebody, throw my name in." And so, that's how it turned out. Nobody in Kent County wanted to bother with it either. And so, that caused a big problem because the corporate bar, up in Wilmington, which I knew nothing about at the time, I guess, was horrified at the prospect that the third member of the Court of Chancery is going to be one of these two yokels from downstate. One is a Family Court judge, and the other is a, you know, a small-time practitioner, never been in the Court of Chancery in his life. And so, they imposed upon the

governor to – they had a committee of, I would say, corporate lawyers – I assume they were all corporate—or eight or ten of them, but they wanted to interview us. See who they could stomach, I guess, of the two because that's all they had. And so, that was set up for interviews in Dover. Jay's was supposed to be at 10 o'clock, and mine was at 11. When I originally heard that, I told my brother, I said, "You know, those silk-stocking bastards up in Wilmington, tell them to go to hell. None of them ever set a foot in the Family Court. I got to go, sit down, and be interviewed by this gang? You know, I'm not of their number." And he said "Now, now, now, don't be hasty." And so, I agreed to be interviewed. So, the day of the interview came, and I was sitting in my office in the Family Court in Dover, waiting for my 11 o'clock appointment, when Wesley Atkins, who was the bailiff for the Supreme Court for many years – quite a fellow, he came knocking at the door and said, "Mr. Brown, Mr. Brown, they're waiting for you." And I said, "Well, my appointment is not until 11. Mr. Dunlap is at 10." And he said, "Mr. Dunlap withdrew." And I was all they had left. And so, I went over and got interviewed, and was asked questions and that sort of thing and, as a result, the downstate bar had no other choice, I guess, and thereby did I become a member of the Court of Chancery. But the price I had to pay was I lived in Dover, but

the office was in Georgetown, and so, that's what I did as a member of the Court of Chancery. All those years, I had to drive down to Georgetown every day, where my secretary was, where I could do anything, or I had to go to Wilmington, where most of the activity was. And, but I was all right. I was younger then; I wouldn't do it now.

MR. BAYLISS: What sort of training did you have in corporate law when you joined the Court of Chancery? #00:14:15#

CHANCELLOR BROWN: None. I didn't know anything about it. I, you know, formed mom and pop corporations for people that had a little business or something where you send away for a corporation kit and get some stock certificates and a seal and drew up the minutes and all that. But that was it. And I figured you have to learn it, I guess.

MR. BAYLISS: Did you have a law clerk? #00:14:39#

CHANCELLOR BROWN: No, I never had a law clerk in the Court of Chancery, whatever it was, 12 years. We didn't have it in the budget. In the budget in those days, there was only money for two law clerks. And the structure of the court, there were a Chancellor and two Vice-Chancellors – there was always 13 people, I think, on the Court of Chancery all the time I was on it. And there was the Chancellor and two Vice Chancellors, and they each had a secretary – that was six. And

there were two court reporters – that was eight. They had a stenographer, that was 10. And we had a receptionist in the Wilmington office, and that was 11. And we had two law clerks – that was 13. That was the court when I was on it. There wasn't one for downstate because the two law clerks, quite naturally, came up from Wilmington and there happened to be a chancellor and a Vice Chancellor in Wilmington, and I – in the start, I didn't know what you were supposed to do with a law clerk because I was never qualified to be one. I didn't know anything about it. But I asked them to do a couple things every now and then for me, and they'd say, well, you know, Vice Chancellor, we're glad to get to it just as soon as we get finished working on this thing for the Chancellor and this, that, and the other. And I remember, one time, I asked one of the law clerks up there if they could help me out on something and he brought me in a stack of cases that he photocopied, about two-inches high and had done his job. And I said, "Oh, the hell with this. This isn't worth messing with. I'll just do it myself." So, I never bothered to try and get a law clerk. I wouldn't have known what to do – it would have just been somebody underfoot, and...

MR. BAYLISS: So, you joined the Court of Chancery in 1973, right? #00:16:28#

CHANCELLOR BROWN: That sounds right, yeah.

MR. BAYLISS: And the Weinberger litigation gets filed in 1978. So, you've been on the bench approximately five years at that point. #00:16:42#

CHANCELLOR BROWN: Mm-hmm.

MR. BAYLISS: By that point, did you have a lot of training in corporate law? #00:16:49#

CHANCELLOR BROWN: Quite a bit. You couldn't help it back in those days. The corporate cases came in. I can't remember how many, but it wasn't anything new. I mean, a case like the Weinberger case – there were others. I lose track of time of when various cases came in, but there was a lot of corporate litigation. And I was fortunate because I had the benefit of very good attorneys in those days. And I'm talking about the Wilmington attorneys, not necessarily guys from New York that they were local counsel for, but the lawyers were very good, and they helped educate me. The briefs were good. The arguments were good. And, if you paid attention, you could learn something.

MR. BAYLISS: The initial complaint in the Weinberger case gets filed on July 5, 1978. It's seven pages long. And, in a later opinion, you wrote about it: *To view this as pleading conclusions is to recognize the obvious. Under the decision of Singer vs. Magnavox Co., however, this appears to be sufficient to state a cause of action and to*

require the court to hold a fairness hearing. Could you tell us a little bit about Singer and what you were referring to there? #00:18:07#

CHANCELLOR BROWN: Well, Singer was one of those earlier corporate cases that you were talking about, did I have any of them? And that had come in. That was my case. And that was where, I guess it was North American Philips, a big company, had decided to acquire Magnavox, and had enough shares – accumulated enough shares, I forget how, but it had more than 50 percent, so... And they decided to effect a cash out of the minority shareholders, through a merger. And they formed a – had a subsidiary and merged Magnavox into the subsidiary with Magnavox being the surviving corporation. And put it out to the voters, which was approved. There was no problem, but it went up on appeal—well, in front of me, the argument was – various arguments were made, I can't remember what, but I issued the decision saying, well, that's what the statute says. It says -- the corporate law says if you have, you know, majority voting control, you can use it. And I couldn't find anything really terribly wrong in the facts of the case with what Magnavox had done. But, it was appealed, and the Supreme Court reversed and, I think, fair to say established some new law. And what came forth was, and maybe it was deserved, quite frankly, but they came down with a

decision that said it's a violation of your fiduciary duty as a majority shareholder if you use that position to merge out the minority for cash with no proper purpose. Maybe proper is not the right adjective – but business purpose or something. And there was none there in the facts of this case, and so they reversed and sent it back for trial. And I think it eventually settled. I never had to end up trying the case, but when Weinberger came along, the complaint that came in was basically what Singer authorized. The plaintiff simply said that Signal Company, or whatever Signal's – the rest of Signal is, I don't remember now, but that was the majority shareholder, and they had owned 50.5-percent of the stock of UOP and had merged out the minority for cash. And the complaint said this happened, and there was no business purpose, so it didn't take many pages to get that.

MR. BAYLISS: So, you were dealing with a legal regime where a seven-page complaint could survive. #00:20:52#

CHANCELLOR BROWN: Yeah. I mean, yes. Excuse me; I should talk more like a judge. Yes.

MR. BAYLISS: You also described the complaint as, quote, *a document perhaps artfully drafted as such, possessing certain chameleon-like characteristics, which enabled it to change its appearance while under scrutiny or attack.* It's a

colorful metaphor – what were you describing there? #00:21:19#

CHANCELLOR BROWN: I'm not sure I remember exactly now, and the degree, but it just – I think it was because there was nothing in it, as I remember. It was basically just – there was no business purpose for this. There weren't any allegations of fraud or misrepresentation or anything dastardly done by Signal, just that Signal had no business purpose. And, under Singer, that's a violation of fiduciary duty. And, you know, give us our damages, Your Honor. So, you know, that meant that you had a lot of leeway to play with, I guess, if something went wrong because if that complaint got thrown out, you could – as later happened -- I think you could modify it, add something. But, there weren't, I think, any great consequences, I recall, in that complaint.

MR. BAYLISS: You did end up dismissing the complaint but then allowing leave to replead. Could you say a little bit about the decision to dismiss it? #00:22:20#

CHANCELLOR BROWN: Well, the reason was the way the merger was structured. Signal was, apparently, through counsel, crafty enough to see that they had a potential problem under Singer, you know, if they just came in and used their majority share, 50.5-percent, not even 51-percent, to cash out the other 49-1/2-percent. And so, the merger was

structured, under the merger agreement, that before this could happen, it required a majority – I think I got this right, tell me if I'm wrong – but the majority of the minority shareholders voting on the merger. That had to occur, number one. And, number two, if there was a majority of the minority shareholders voting, that number of shares that voted, coupled with Signal's share, had to represent two-thirds of all the outstanding stock of UOP. And so, I thought, well, that's not what happened – that's not the problem Singer was addressing. Singer was addressing where you just use the numbers. I got 51-percent; we're cashing you out. You got to have business purpose for that. Well, on this one, Signal didn't do that. They left it up to the minority shareholders, to a degree. In other words, it didn't use its controlling position to put it through. There was always a chance that shareholders could have turned it down. . I am sure they weren't worried about it given the price they were offering, but at least it was tactfully structured that way. And so, I thought, this complaint, it says nothing other than there is no business purpose, couldn’t pass muster, so I threw it out. But, it seemed to me, under the circumstances, I ought to be realistic and since we're all dealing in kind of a new ground, the lawyers as well as the court, give them the opportunity to file an amended complaint. It was a big company. There was

what? Eleven million shareholders or something? I mean, it was a large company and a lot of people involved, and it seemed to me a lot of time had been put in it. And it just seemed to me that they ought to have the opportunity to file an amended complaint, so... .

MR. BAYLISS: Let's talk for a moment about Mr. Weinberger, the plaintiff. In a class certification opinion, you acknowledged that he was 81 years of age. You went on to describe how, at his deposition, he had virtually no accurate knowledge of the status of the suit. That he was unaware of the findings and opinions of any financial analyst who had been retained by his counsel. He hadn't met his lead Delaware counsel until two days before his deposition. He had virtually no recall whatsoever as to the outcome of several other class and derivative actions in which he participated as a party plaintiff, including one in this court, in which I granted his motion to intervene as a party plaintiff, and as to which I approved a final settlement as recently as January 1978. But notwithstanding that, you certified him as a representative plaintiff. Why? #00:25:48#

CHANCELLOR BROWN: Well, as a practical matter, you got to understand where I came from ... just common sense. If you throw him out, somebody else is going to come in anyway; they're going to put somebody else in. And, actually, the

lawyers ran these class actions and the named plaintiff, in my experience, and I think everybody else's, did virtually nothing except lend their name, as stockholders, they qualified as the party to bring the suit. And it was always counsel that ran it and did things. And, as far as I was concerned, it's why are we going to make a big deal out of Bill Weinberger? He doesn't know anything about the case. He's not the first class action plaintiff or derivative plaintiff that's come through here and doesn't know a damn thing about the case. But his lawyers do, and the lawyers are qualified, and they're presenting it, and you got a lot of stockholders out there. And so, let him stay. He's not going to do any harm.

MR. BAYLISS: You mentioned his lawyer. The lead lawyer in Delaware was Bill Prickett. #00:26:58#

CHANCELLOR BROWN: Yes.

MR. BAYLISS: What were your impressions of Bill? #00:27:03#

CHANCELLOR BROWN: I don't know if I should say all that on camera or not, but... No, Bill was a very good trial lawyer. And I got my experience with Bill and his office when I first started practicing law down in Dover because, back in those days, his firm did defense work for insurance companies, in personal injury cases. Any time you filed a personal injury

case, within days you got a set of interrogatories and an answer from Bill Prickett's office, and that sort of thing. So, I had, you know, known him from just – not him so much, because I generally got Rod Ward or somebody in those days, who would be in the case. But when it came to Chancery, then by that time, he was – he got in to do some of these things, and I was familiar with Bill, and he was a good litigator. He was a good litigator because he spent a lot of time in court, cross-examining witnesses. You know, he'd been in court as a litigator, down when it was you know, a case a week or something like that, defending things, which kind of makes a difference. That's not disparaging corporate lawyers in New York who don't get in, you know, to actually try a case that much. But he did. He was there. And he knew how to handle himself. And he was – he was ornery. He liked – he had a sense of humor, and he liked to get at things, and you know, I was just familiar with Bill. He was a good attorney. Sometimes he would have rather preposterous approaches to things, but if you'd called him on it, he'd back off and come another direction. But, no, he was good. And he was colorful. I kind of always enjoyed Bill coming into court because you knew it wasn't going to be another dreary argument, you know, he was going to make. Bill had a – I observed – he had a knack for always in court wanting to poke some kind of a jibe at the

opposing attorney along the way. But you know, little things like – if my worthy opponent on the other table had read the cases that he cited in his brief, he would know that his case is absolutely unsupportable, or something like that, when had caused the other attorney to get up and say, Your Honor, you know I read all those cases and... . Well, I observed – my observation over the years was Bill did that just as a tactic. He wasn't mean about it or anything. He just poked the jibe because he'd get the guy off his train of thought – his opponent. His opponent was there to make an argument, probably had things racing through his head that he was going to say to the court and Bill would say something to cause him to forget all that and have to defend his honor or something—you know, it was… he was colorful like that.

MR. BAYLISS: Did you have any contact with the New York lawyer who was involved on behalf of Mr. Weinberger? #00:29:48#

CHANCELLOR BROWN: Not that I recall. I can't remember who it was.

MR. BAYLISS: So, the case was litigated by the Prickett firm? #00:29:55#

CHANCELLOR BROWN: Yes.

MR. BAYLISS: You end up certifying Mr. Weinberger as a class representative, but then you cut down the class

size to stockholders who hadn't voted in favor of the deal. #00:30:11#

CHANCELLOR BROWN: Yes.

MR. BAYLISS: What was your rationale? #00:30:15#

CHANCELLOR BROWN: The way, again, that Signal had structured the merger by giving the minority a chance to vote it down, if they'd want. And I'm trying to think if there was anything else. I'm sorry, ask me again. What was their class – cutting the class – yeah? The, there was like 147,000 shares, or whatever, that hadn't voted. And the merger was overwhelmingly approved like 12 to 1 by the minority. And with Signal's holdings already, it went way past the two-thirds requirement that they put as a condition for making – or going through with the merger. So, I don't know, it just seemed to me that, under the circumstances, those people that were happy with the merger price, which is, I think, seven dollars, or something like seven or eight dollars a share above the market price when the merger was announced, I didn't really see why they should be coming back in to maybe get more. But I thought those who voted against the merger, certainly were entitled to be represented. So, I thought, in my mind, the logical approach would be to make the class the people who opposed the merger, who didn't want the $21.00 a share, wanted something

else. The rest of them were happy with $21.00 a share, you know.

MR. BAYLISS: So, the proposed class had been about 5.7 million shares, and the class certification decision cut that down to 140,000-some— #00:31:53#

CHANCELLOR BROWN: Yeah, 147, I think it was. I've been reading—

MR. BAYLISS: Did you expect the case to disappear at that point because it was no longer economical to pursue? #00:32:02#

CHANCELLOR BROWN: I don't think I did. I never paid that much attention to it. You know, I never knew what the financial arrangements were that local counsel had with class representatives and that sort of thing. I don't know, we just made a decision, and that was it, see what happens.

MR. BAYLISS: At what point did you start to think this might turn out to be a really important case for Delaware law? #00:32:32#

CHANCELLOR BROWN: Prior to the Supreme Court decision, I'm not sure I ever did. It just seemed to me that it was – I only decided things as a vice chancellor based on Delaware law – precedent, statutes, argument. After 12 years, I never decided anything based on a decision of a court of out of state. And I always just – the only thing I ever cited was

reported Delaware decisions. I remember Chief Justice Herrmann told me, one time, that an unreported decision has no precedential value. You're not bound by them. A reported decision does. So, I figured, well, and there were enough reported decisions out there going back in the twenties and the thirties and the sixties, or something, on corporate things, that you could, if you read them, read them close, tried to see what the reasoning was behind them, you could – generally you could use the Delaware authority, reported authority, as a basis for reaching your decision. That was my approach to things.

MR. BAYLISS: Did you have a litigant cite to you unreported authority or things like transcript rulings to try to persuade you one way or another? #00:33:51#

CHANCELLOR BROWN: I wouldn't say that that was never done, but it certainly wasn't predominant. Well, I mean, an unreported decision, you're not bound by it. You may be now; I don't know what it is now. Back then – and if you wanted to cite an unreported decision as authority, the requirements of the Chief Justice was you had to – you couldn't just cite it, you know, give the citation. You had to give some background and the facts and what the thing was and what the reasoning was for deciding. You could use an

unreported decision then. But a reported decision, you didn't have to do that. You could just cite it.

MR. BAYLISS: Fast forward to the trial. It's 11 days long. Was that typical of corporate cases that went to trial? #00:34:45#

CHANCELLOR BROWN: No. Not mine. We rarely – I never had that many actual trials of corporate cases. They had trials in land disputes and specific performance actions, and things like that, but when you get in the big corporate cases, I don't remember having that many actual trials. Most everything went off on questions of law, apply the facts that were before the court on summary judgment procedures, and that sort of thing. It was the argument and the briefing and that sort of thing that you used. So, that may have been the longest case ever tried for all I know. I don't remember. I don't remember any one being any longer. I didn't remember that one being 11 days until I read – I read the decision.

MR. BAYLISS: Let's talk about the experts who presented their opinions at the trial. The defendants submitted a report by Mr. Purcell that applied the Delaware Block Method. What was that? #00:35:50#

CHANCELLOR BROWN: Well, the Delaware Block Method, established by reported precedent, I might add, was if you were valuing a stock, you had to – there were four things you

had to look at, and I forget what it exactly was – asset value, earnings, market price, and something else. And you had to look at the business of the corporation. What it did. What its future prospects were based on the evidence presented to you. And try to put a number on each of those three or four categories. And, then, based on things outside the number of the business prospects or the past, or whatever, you had to weight those four categories and come up with a number. And that gave you the value of the stock for the purposes of – litigation purposes, I should say. And that's not saying it too well. Somebody could read it and get it better, but it was along those lines. But it was established under Delaware law. It might have been established in Sterling vs. Mayflower for all I know, but I had had cases before, even though I hadn't been on the bench that long – corporate cases -- where I had to value stock and had to use it. And that's what Delaware law said you had to do.

MR. BAYLISS: The plaintiffs proffered Kenneth Bodenstein, who presented a premiums paid analysis and a discounted cash flow analysis—

CHANCELLOR BROWN: Right.

MR. BAYLISS: What was your reaction to that?

#00:37:17#

CHANCELLOR BROWN: Well, the premium based on comparative transactions, that wasn't, to me, unusual. We had that; I think that normally came in. But an expert would look at other merger, acquisitions, that sort of thing, assembled over a period of time and see what was paid and that sort of thing. Used a number of comps, see what kind of a premium over market price was paid in those things, and use that as a basis for coming up with their expert opinion for what the stock should be worth in this case. So, that wasn't necessarily new, but this thing called the discounted cash flow analysis was completely new to me. But not Prickett. Prickett was out there, sallying forth. He had Mr. Bodenstein – he was a nice guy, very cooperative and very qualified, I am sure, but he had this way of using the elements for a discounted cash flow to come back to a value and I kind of thought, when I was hearing all this, what in the hell is he doing? You know. I can't use this. Delaware precedent says it's the Delaware Block Method, and you do it this, this, and this. And he's coming in with, Mr. Bodenstein, who is projecting out and discounting back and all that sort of thing. And, but you listen to it, and when it came time for a decision, if you were there yet, it seemed to me that it not only didn’t jive with precedent, but it was a little too loose for putting a value of a stock at the time – putting a value on stock as of

the time of the merger. And I don't know, it just – the idea, it was that you use projections and that sort of thing, and you get a figure way out here, 10 years ahead, and then, you discount it back by some percentage, and that percentage comes right out of the expert's head. And everything up to that point is documented by numbers and all sorts of things, and everything is fine. But, at the end, it's a question of whether you put four percent, eight percent, six percent, or whatever, which comes out of the expert's head based on his experience. And I thought you know, that's not the way, as I understand Delaware law, that you value stock for the purpose of a take out in a merger. So...

MR. BAYLISS: So, I take it you didn't expect the discounted cash flow methodology to catch fire in Delaware jurisprudence. #00:39:56#

CHANCELLOR BROWN: I never thought about it, to tell you the truth. But you know, I think not because I – it was – based on precedents in other cases that I had, I thought this was so far out, beyond what Delaware law says, I can't imagine anybody is going to buy that. I'm certainly not in a position, at the trial court level, in view of precedent, to say that I accept, you know, that I am going to establish new law. I tried never to establish new law. I always just tried to follow what the law was. And I remember Justice McNeilly, one

time, told me when he was a judge on the Superior Court down in Sussex County, he used to have to sit in Wilmington every once in a while and handle motions. And he'd hear the argument on the motions, and he said he just ruled from the bench – motion granted, motion denied. And he said, the Wilmington judges, he said, they want to write decisions and write opinions and all that sort of thing. He said Superior Court doesn't make law or write that. That's for the Supreme Court. Someone wants to know why they do something, take it to the Supreme Court. He just said granted or denied. So, in any event, it's – I didn't know – didn't expect anything to come out of it one way or another. I never ran that deep. I was just handling what was in front of me.

MR. BAYLISS: It must have been a huge risk for Bill Prickett to present an expert who didn't use the Delaware Block Method at a trial in a big corporate case. #00:41:25#

CHANCELLOR BROWN: He gambled.

MR. BAYLISS: It seems like a huge gamble.

CHANCELLOR BROWN: Yeah. Like I said when we were putting this on, I said, you know, why is he doing this? I can't use this. As I said, it's not the law. There is a way you do it; it's established. I'm bound by it. I'm a trial court. So, but I didn't like the logic of it either because it

seemed to me there was something a little loose there at the end.

MR. BAYLISS: Did you have the sense that he was trying the case to take an appeal, or— #00:42:01#

G No. I'd just say I never ran that deep. I just figured this is the case before me and this is what he's offering. I'm not sure why he's doing it. I supposed Bill thinks that maybe I'm dumb enough to buy it, but...

MR. BAYLISS: But you weren't. #00:42:15#

CHANCELLOR BROWN: Right. I wasn't. On that one.

MR. BAYLISS: On February 8, 1981, you issue a 79-page post-trial opinion. #00:42:27#

CHANCELLOR BROWN: I did that. I have to confess.

MR. BAYLISS: That seems long. #00:42:31#

CHANCELLOR BROWN: I'm sorry about it, but I did it.

MR. BAYLISS: Was that typical?

CHANCELLOR BROWN: Not back then, no, not... I think – I don't know how it came out that long. I don't think it – well, I guess if it's 79 pages, you measured it, but it was a big case. It had been going on for a long time and – years, and there were things in it that I was trying to, I think, put everything – I figured it was going to be appealed at that point. Anything that big, you know it was going to be appealed, one way or the other. And I was just trying to make

a thorough presentation of why I did what I did. I always tried to do that. I suppose I – I was accused early on of writing opinions that were too long, back when Bill Quillen was Chancellor, and he got after me when I was Vice Chancellor. He said, your opinions are too long; you got to cut them down – because they would run 20, 22 pages or – so, double spaced on the typewriter. And he said it's not good. And I told him, I said, Bill, well, the reason I do that is I try and put enough in the opinion, facts and law so that if the Supreme Court says I'm wrong and wants to reverse, that's fine, they can reverse and enter another judgment. But what I don't want them to do, which I had seen them do quite often, is send it back remanded for further proceedings because they didn't have enough to go on. I said that was my approach to things. I didn't necessarily want to write long opinions, but I would put enough in there so that if the Supreme Court said I was wrong, they could reverse it and say enter judgment accordingly. Don't send it back for six more days of trial or something. And I think probably that's what I was doing in this case, but it got out of control because there were so many things in it.

MR. BAYLISS: The Arledge and Chitea Report plays a huge role in the appeal. It appears just once in the post-

trial opinion, in the background section. Did it play a big role in the trial? #00:44:45#

CHANCELLOR BROWN: No. Absolutely not. I mean it just wasn't—it wasn't brought—it was in evidence, I think it was—obviously, it was in evidence. It was a document, but there wasn't any big discussion about it. It certainly didn't take on an importance – it took on no importance, quite frankly, at the trial. Nobody made any kind of an argument that was anywhere near what the Supreme Court found when it reversed. Heh! As a matter of fact, I think one of my later decisions I reviewed for the purpose of this interview, indicated that neither Arledge nor Chitea testified in the trial. They weren't called as witnesses. They were on the witness list, could have been called. They didn't – they weren't there. And, I think, somebody pointed out that Mr. Bodenstein, the expert witness for Bill trying to – Bill Prickett trying to establish value and all, he was on the stand for the better part of three days, and he only mentioned it once, the Arledge and Chitea Report. And it just never was anything there presented about Arledge and Chitea. They didn't appear. The report wasn't – it was mentioned or something, maybe in a post-trial brief, I don't know, but it was not the big thing.

MR. BAYLISS: Did you expect the appeal to turn on that issue or other issues? #00:46:41#

CHANCELLOR BROWN: Well, I certainly didn't expect it to turn on that one. It never entered my mind. I mean I understand the reasoning of the Supreme Court, but, it seemed to me, it was a stretch for the Supreme Court to attach that much significance to the Arledge and Chitea Report to get to a result. I think the Supreme Court, just on reflection years later, the Supreme Court needed to do something, and they needed a vehicle to do it, to make some new law or clarify some law, as the case may be, or both, and but they had to find a way to reverse. And, I mean, I don't know that they could have affirmed and put out an opinion that clarified everything and did all the things that they did in the decision that came out. And it was there and Justice Moore, he wrote a very good opinion, and he got the mileage out of it, but it really wasn't in the case at the trial level. And what was on it? I can't remember now, but I'm not even sure the Signal Board of Directors ever saw it. I know in one of the follow-up decisions I had to make, it was – the argument kind of went, if I could remember it right now, and that the Arledge and Chitea Report was prepared by Signal and, somehow, it was assumed, based on the Supreme Court's decision, I think, that the Signal Board of Directors considered it in

deciding to go through with the merger. There wasn't any evidence of that, that I recall. I don't think the Supreme Court found any. It just wasn't there, but the fact that it was there and it was a Signal document that reflected on what prices – at what prices and acquisition of the minority of UOP would be beneficial to Signal. You know, it had a lot of good stuff in there to use if you wanted to say it's a document that should have been disclosed to the shareholders – the minority shareholders. But I never thought it was anything more than what it was offered to be. It was somewhere along the line, Arledge and Chitea were members of Signal's management. They were vice president each of something. I don't know which. They were also on Signal's Board, and they were also on UOP's Board. And the inference was that somehow, from all of that, that Signal's Board had to be aware of this and would have considered it in any price between $18.00 and whatever it was, $24.00 a share, it would have been beneficial to Signal, a good investment for its money. And there just wasn’t any proof that anybody considered that, but the Supreme Court said, well, it was there and somehow the minority shareholders, I guess, should have been made aware of the fact, even if nobody at Signal – at Signal's Board considered it or UOP's Board considered that the minority shareholders should have been made aware of the fact that there had been an

analysis made by Signal management personnel, just for informational purposes, I think, that said you could pay up to $24.00.

MR. BAYLISS: I want to go back in time a little bit to what I would describe as appellate decision number one, which is the affirmance of your 79-page post-trial opinion—

CHANCELLOR BROWN: Oh, yeah, I forgot that.

MR. BAYLISS: Justice Duffy, Justice McNeilly, Justice Quillen are the decision-makers, and they affirm— #00:50:42#

CHANCELLOR BROWN: Yes. I had forgotten that. It's refreshing to find out that I did get affirmed somewhere along the line.

MR. BAYLISS: With a dissent from Justice Duffy. Were dissents rare? #00:50:57#

CHANCELLOR BROWN: I think so. I think you could say that back then. Occasionally, there would be one.

MR. BAYLISS: At this point, at the time of the affirmance, did you recognize that this was going to be a big case? Or was it still just any other case? #00:51:19#

CHANCELLOR BROWN: At that point, just any other case. I had given a thorough, documented, windy, reasoned decision, and it was affirmed two to one. And Justice Duffy, in his dissent, he didn't like the way I did a couple things,

but his main dissent was, I think, had to do with Lehman Brothers, wasn't it? That I kind of – Lehman Brothers was the financial advisor to put the blessing on the price of the merger and all. And he thought they should have some fiduciary duty, and I wasn't aware that the financial experts had any fiduciary duty. And so, he was reversed on that. But he also said he thought, I think, that somehow I put the burden on the plaintiff to show the price was unfair when, really, under established law and, particularly under Singer, I suppose, the burden would have been on Signal to prove the fairness of the price.

MR. BAYLISS: So...

CHANCELLOR BROWN: I mean I can add, my personal view is, I could, knowing Justice Quillen and Justice McNeilly -- I knew both very well for a long time-- I'm sure they took one look at 79 pages and all this stuff and said, you know, we're not going to mess with that. He's got enough there. It's a reasoned decision; we'll affirm. I'm sure that's how it came about.

MR. BAYLISS: Did you expect the case to end after the affirmance? #00:52:46#

CHANCELLOR BROWN: Well, no, because the Supreme Court, in its decision, sent it back and got it remanded, to have me decide what damages, if any, the class, which had then

been expanded by the decision to include all 49—all the, however – yeah, 49 percent minority shareholders, not just 147,000 shares that I had, but the five million, five or six million shares.

MR. BAYLISS: Well, I want to focus you on the fact that there was a petition for rehearing filed by the Prickett firm. It seems as if it was a Hail Mary. They had lost at the trial court level and a 79-page opinion. The Supreme Court had affirmed, with one dissent, and yet there is a petition for rehearing. The persistence is stunning. #00:53:51#

CHANCELLOR BROWN: Yeah, I didn't know anything about that at that time. At that time, I didn't know what proceedings were going on in front of the Supreme Court. I didn't know anything about a petition for rehearing or whatever. I'm not surprised knowing Bill. He would have thought, lord, what with what I put into this case and I get this kind of decision, I'm, you know— I think if you had petitioned, if they granted a rehearing, it had to be by the court en banc, wasn't that true? That you had to have had all five members. So, he's basically drawing a new hand, like in poker, you know, give me two new cards.

MR. BAYLISS: And I want to focus on that because it does appear that he did, in fact, draw a new hand because the

decision – the next appellate decision is by a court that is totally different. #00:54:34#

CHANCELLOR BROWN: Yes.

MR. BAYLISS: Because Chief Justice Herrmann is the decision-maker. Justice Moore is on the court at that point. Justice Duffy has retired— #00:54:51#

CHANCELLOR BROWN: Mm-hmm, yes. And Justice Horsey got on it somehow. And I'm not sure why he wasn't on it the first go around. It seemed to me it had something about the time he had been on the courts, or something, but it – the opinion that affirmed, they pointed out that – Quillen, Duffy, and McNeilly were the only members of the court available or qualified or something at the time, to make the decision. And I think I picked up in watching Gil Sparks' interview, which I didn't remember, that Herrmann got back in because, in the case, Lehman Brothers was a financial expert blessing the merger, who was represented by Richards Layton, and Chief Justice Herrmann's son was a lawyer, a partner, at Richards Layton, so he wouldn't sit on cases when his son was in. But I think Prickett dismissed Lehman Brothers, didn't he? After – he took them out of the case, so that was a rather smart move in the long run. And I didn't think he had a case against them anyway. I think he just threw that in there to see what he could get. And so, he dismissed them, and that freed up

Herrmann, so he could be on the court en banc. And then, whatever the time limit was on Horsey serving, that expired, so he was on.

MR. BAYLISS: So, does, at least from reading the opinions, it seems as if the tenor of and the Supreme Court, or the tone at the Supreme Court is totally different between the decision affirming you and then a decision reversing. What happened? #00:56:35#

CHANCELLOR BROWN: I have no idea what happened. I think because – I think it had to do with Justice Moore, and he, as I say, I think he wrote a very good opinion, but they – it looked like they decided – somebody got – probably Moore, would be my guess, whom I knew reasonably well over the years, somebody thought we got a problem here. It was with Delaware law. We got to get some things straightened out for the good of corporate bar and state's image and everything else. And this is something that's laying here that we can pick up and use on this re-argument to do that. And so, to me, that's how it came about because, you know, they did certain things in there. They did away with the Singer decision. And there was – therefore, it said you had to have a business purpose if you're the majority. You just couldn't use your 51 or 52-percent majority to merge—to cash out, particularly cash out. It might have been different if you were, you know, merging

and giving them stock in a subsidiary corporation or something, but or some kind of stock, but you couldn't just cash them out, you know, without that business purpose. And in the process, the Supreme Court, as newly constituted, on the rehearing argument, decided that's no longer the law. No, we don't need that any more because they opted for the entire fairness standard, I guess, if – I think it came to light most notably in Sterling vs. Mayflower Hotel Corporation. As long as you got the entire fairness test and that sort of thing, you don't really need this business purpose. So, that was one thing they got rid of. And they also established something I'm not quite sure I ever fully understood, but they quite established a new way of valuating for appraisal actions and that sort of thing, which basically said you just got to look at everything. And they're already saying that the market is using you know, it's – and they said something about an appraisal action, henceforth, will be the way you'd take care of these things when you had this kind of a situation for the minority shareholders, which I don't think ever really proved out. But it seemed to be an instructional decision on four or five things, or three or four things to, in effect, say this is the law going forward. The Delaware Block Method is no longer there. You can use anything acceptable. You don't have to have a business purpose any more. But you do have to have –

you have to measure things by entire fairness. And, you know, and actually, I did get affirmed on a couple things in there, whether you noticed or not, because in the court below, there was a question about burden of proof and that sort of thing. And how did it go? I think I said, well, you, for this business purpose thing, you can't just allege that. You got to have – if you're going to put the burden on the majority of shareholders to do that, you got to allege something that they did wrong because this is not an administrative hearing. This is a court proceeding. You've got to have evidence. And there was something else in there. I don't know. But, in any event, the Supreme Court said – they pointed out that I'd made a couple decisions, right in the opening paragraph or the second paragraph, and said, we affirm the Chancellor on that. And there was something else they said I did that they approved. So, it was nice. I got two little things out of it.

MR. BAYLISS: So, at this point, I take it you realized the case was going to be big for Delaware law.

#01:00:24#

CHANCELLOR BROWN: Well, I don't know that I did. I mean, I didn't appreciate it at the time like I do now, for instance, because we had other things to do. Who cares? You know? It's up. It's gone. You've done the best you can. The Supreme Court reversed. It's coming back. In the meantime, I

got Hamermesh, and everybody's in with all the other cases, and you got things to do. You don't really sit back like an academic, like you're an academic and you get to reflect on what's going to happen now. You're just trying to keep up with what you got back in those days.

MR. BAYLISS: Do you recall there being a reaction in the corporate bar to the decision in Weinberger? #01:00:57#

CHANCELLOR BROWN: I think there was. I think I picked up something about that, that the corporate bar wasn't necessarily happy. Maybe some of them were. I'm sure Prickett was ... . but, yeah, I think it was new, and it was novel, and I'm sure there were innumerable law review articles written about it. I never read law review articles, though. They were beyond me.

MR. BAYLISS: In fact, Bill Prickett wrote a law review article shortly after the opinion discussing some of the takeaways from it. But I take it if you didn't read them, you weren't paying much attention to what was appearing in the *Delaware Journal of Corporate Law* or— #01:01:38#

CHANCELLOR BROWN: No, and unlike modern jurists, I never – I wasn't an academic by nature. You know, I didn't go to Yale or Harvard, or anything, and hell, I couldn't have gotten into Harvard as a janitor. But you know, the – well,

what should I say? Let it go at that. I'm just saying, and I don't mean to be belaboring this, but the court was busy back in those days. We had a lot of things going on daily. And the last three years, after I was appointed Chancellor, I worked three years, never took a vacation. I never took a day off. And I even had to come in a couple times on Sundays for labor disputes and that sort of thing. You just didn't have the time to sit down and engage in academic, you know, thoughts and analysis, particularly since you don't have the mind for it, and so, I never did that sort of thing. Try to keep up. Survive. Survival is the name of the game, you know.

MR. BAYLISS: One more question before we leave the appellate decision. Justice Quillen and Justice McNeilly had been on the opinion affirming you— #01:03:00#

CHANCELLOR BROWN: Yes.

MR. BAYLISS: They also sign on to the opinion reversing and remanding. Did you ever learn how it was possible that they could be on both sides of this issue quite like they were? #01:03:18#

CHANCELLOR BROWN: No, I never learned. I just, you know, presumed they became enlightened, I think. I thought somebody – that's why I kind of blamed Drew on it, I guess, because I thought somebody caused them to see a different perspective on things. Because I don't really – as I said, I

doubt they put a lot of time in on that first decision. They just – because of the way it was. It was on the facts. There was a lot of facts. It was 70 pages long. And, you know, I had analysis in there of whether the Singer case affected something. It was all that sort of stuff that they didn't really need to put a lot of time into. I am sure they had other things to do too, you know. We were all busy in those days. But my guess is, without knowing, I thought when Justice Moore got in there, he's a fresh voice on the court, and he probably, knowing Drew, he sat them down and said, look, we got to do something about this. And this is the case to do it in. And here are the points we have to make; one, two, three, and they agreed.

MR. BAYLISS: So, the case comes back to you— #01:04:23#

CHANCELLOR BROWN: It's the thing you never want to happen, but it came back.

MR. BAYLISS: And the Delaware Block Method has been declared outmoded. And, instead, there is a new valuation standard— #01:04:37#

CHANCELLOR BROWN: It wasn't done away with. You could still use it, but it wasn't the exclusive. I think that was the way it came out. Theretofore, the Delaware Block Method was what you used. And they said, well, it's no longer

exclusive. You can value by any means that's acceptable and bona fide, or whatever.

MR. BAYLISS: And the court also indicated that rescission, or rescissory damages, should be on the table as a remedial tool. #01:05:06#

CHANCELLOR BROWN: Yeah.

MR. BAYLISS: How did you deal with this seemingly big change in the law? #01:05:16#

CHANCELLOR BROWN: [Laughs...] I guess, at the time, I didn't have to do anything. I had to wait until something else came in before I was compelled to do something about it. And what did I have? I had two or three decisions I had to write after the Supreme Court decision, as I recall.

MR. BAYLISS: The parties, or at least the defendants, asked for a preliminary hearing on—

CHANCELLOR BROWN: Rescissory damage.

MR. BAYLISS: -- and essentially, what to present to you at the trial on damages. #01:05:48#

CHANCELLOR BROWN: Yeah, the defendants – that's right, the defendants – they were concerned. I seem to remember vaguely, after the decision, all the counsel coming into chambers one time shortly after and somebody, I think it was Alan Halkett, the attorney from Latham & Watkins out in Los Angeles, he said, "Your Honor, what do we do now?" And I

said, "I don't know." You know. "We'll have to work on it." Or something like that. They didn't know how to proceed as a result of the Supreme Court's decision. It had been remanded back, and there was stuff in there about rescissory damages and, obviously, some other things, and they were, you know, it had been remanded – what – how do we set up the remand? What do we do? So, we figured out whatever came to pass, I guess, but that was the initial reaction.

MR. BAYLISS: It raised, at a minimum, a big discovery issue, which was what to do about the changes in the business since the closing of the merger and how to put the parties in a position to present evidence on what rescissory damages should look like. How did you approach that?

#01:06:56#

CHANCELLOR BROWN: Well, I was asked to rule rescissory damages out of the case on the remand. That was the application. For the reasons you just gave. This is going to be a mess if you're into rescissory damages. The merger has been over for years. We got to go back and get more discovery from years gone back. We got all sorts of expense. Things were piling up. And, if it's not really a rescissory damages case, you ought to get it out now. And I think – I don't really know how I can do that. The Supreme Court has kind of sent it back. And I guess I said rescissory damages, if found appropriate,

or something, but I think at the time, I'm not even sure I recognized what rescissory damages were supposed to be or how you got to them much, or I could explain it now. But, it's like if the merger was wrongful, it shouldn't be upheld and should be undone. If you rescinded it, you would put people back to where they were before the merger – the stockholders. Well, you couldn't do that because time had passed – years -- and so you had to – you would have had to work out somehow a value somewhere in between in those years, pick a date, and for whatever the reasons, and you can accumulate, but say, as of this date, if this merger hadn't occurred – had not occurred, I guess I should be better – the merger had not occurred and these people still had their stock, you know, what would it be worth then? And then you would take that number and deduct the $21.00 a share from it, and that's how you would get the rescissory damages. The theory being, we can't give them their stock back. If we could, their stock would be worth whatever you find the value to be on the evidence and at a point in between in those years. But since we can't, you know, give them the stock back, we'd have to give them the value of the stock, if they still had it. It was a kind of a mess.

MR. BAYLISS: It makes a discounted cash flow analysis seem easy. #01:09:09#

CHANCELLOR BROWN: Yes. It gave it an appeal. In any event, they asked me to rule rescissory damages out, and I said, I can't do it at this point. I think, probably, because I didn't know enough about what everybody was talking about. And since the Supreme Court had suggested, if warranted, rescissory damages, I didn't – having been reversed once big time, you know, I didn't think it was appropriate to get rescissory damages out ahead – I could see where they were coming from. They didn't want to have to go through the trouble. They didn't want to have to go through the expense, and that sort of thing, but trouble and expense hadn't been any problem for four or five years, or whatever this has been going on, so we just do it a little more. And I did say I am not going to award rescissory damages, but I'll wait until we get - you go get what you want and bring it in, and we'll decide whether rescissory damages are warranted or not. So, I declined the motion.

MR. BAYLISS: At this point, are you expecting the case to settle, or do you think this one is going to the bitter end? #01:10:17#

CHANCELLOR BROWN: I don't know. I don't remember. I am sure I was hopeful it would settle after having spent all this time in it. But I don't really have any recollection one way or the other. It didn't, quite frankly, it didn't sound

like it was going to settle because it just wasn't Bill Prickett's nature to want to kind of give up for something less. He, you know, if he thought he had a big hit out there, and he just had a big Supreme Court decision, and he did a great job. Like you say, he got a new hand. He got a new panel. He got a new decision to change the law around. And, also, got the class expanded from 147,000 to five million, or whatever. And you know, Bill's a gambler. That was worth taking a shot at.

MR. BAYLISS: So, the damages trial goes forward, and the opinion on the damages trial gets issued in January 1985. It seems as if you are as uncomfortable with rescissory damages as you were with the discounted cash flow analysis. But then, you award damages anyway. How did that come about? #01:11:39#

CHANCELLOR BROWN: I just assumed, as a practical matter from the Supreme Court decision, they held the shareholders – the minority shareholders -- had been wronged, and they sent it back on a remand. And I said, well, if I just haul off and say no damages, it's going back up on appeal again, and they ain't going to put up with that, I don't think. So, and the case had been going on long enough. I thought, on this remand, as I interpreted, some award of damages is expected. I got to come up with something by way of

damages and get this thing over with. But to come up with something for damages, I got to find something I can justify. I can't just pick a number out of the air. I mean I sat around there and thought, eh, maybe I give them three or four dollars a share or something like that, but hell, there ain't any way I could justify it on the evidence. I didn't have any basis for saying five dollars, ten dollars, or anything else. But I thought I had to come up with some kind of damage, so I'm probably anticipating a question of yours, but I thought, I think root around in the evidence and see what's in there that I can work with. And I know, I'm sure Bill was greatly distraught to get a dollar a share, but there was something in there. I think the – who was it? The Dillon Read guy?

MR. BAYLISS: Mr. Purcell. #01:13:07#

CHANCELLOR BROWN: Mr. Purcell. And, early on, before the merger, in some of his things, he had pointed out that, for Signal, that paying up to either $21.00 or $22.00 a share would be all right. So, I said, well, we got Signal's expert way back before all this mess started and said it would be all right and fair to the shareholders and fair to Signal to pay $22.00. You paid 21. That's a dollar. At least I got something to go on. And there's five, now five million, five and a half million shares out there. And you know, that's not insignificant. And, to me, it's five and a half million

dollars. I mean it's insignificant to him since he'd never get the bill. He was probably going for fifty million, but I wasn't really concerned about him at that time, as much as I liked him. But, so, in any event, that's – I figure I got to come up with something to end this. And what have I got in front of me on remand? They came in with the rescissory damages nonsense, and I couldn't buy that. It was just too speculative, as far as I was concerned. And I think in the Supreme Court it said something – there was some – the word speculative was in there, and you can award damages, as long as they weren't speculative, or something. But this idea of having to try and figure out what a share of stock would be worth at some point, but you didn't know what point. How did that go? I think the experts – what was it? You can help me out on this because you know, but you had to use a date, and they used a date that was, what? The end of the year, whatever it was, but they picked a date because it was the closest or something to the date of the Supreme Court's decision and it was closest to something else – I can't remember what. So, how in the hell do you get anything logically justifiable? That's all I could work with. I mean I'm not faulting them, but there wasn't anything you could get to, so they're basically saying, well, Your Honor, you're going to have to pick a date somewhere between this point and this point as to what the

stock would have been worth if there hadn't been a merger. Now, to get to that point, we got to use the end of December of this year, and the end of December in that year because they're the closest to the Supreme Court decision. And, you know, how in the hell do you put all that together to get a value of the stock on a certain date? It was beyond me. It would have taken somebody with more academic ability than me to get to that.

MR. BAYLISS: I take it that after you issue the January 1985 ruling and the damages, you expected the case to stop? But then there is another appeal. #01:16:03#

CHANCELLOR BROWN: Oh, I didn't – no, I – yeah, well, I didn't even necessarily expect it to stop. I mean, I figured, knowing Bill, he'd try it again, but I didn't know what else I could do. It had been remanded, and I had done the best I could again, interpreted the Supreme Court what they said what I was supposed to do. I looked at the evidence. I tried to find some way to logically justify a result of some damages because I thought that was implicit in what the Supreme Court sent back. And that was the best I could do, you know.

MR. BAYLISS: There's an appeal. Signal files a motion to affirm. And the Delaware Supreme Court grants it. And so, the case is finally over. #01:16:45#

CHANCELLOR BROWN: Yeah. I didn't remember that. I didn't – I learned that as part of this exercise.

MR. BAYLISS: You must have been relieved. #01:16:51#

CHANCELLOR BROWN: Yes. After all that. I didn't – you know, it's a very interesting thing now to go back through all of this. It wasn't terribly fun back in those days with everything else you had to do to – what? Weinberger is here again? You know. And, but looking back, it was a good exercise, I think, in the Delaware judiciary trying to make sure that its corporate law was up to date with what was going on. And like I say, I never mind being reversed. I just didn't want them to send it back, but I lost on that, but—

MR. BAYLISS: You won the second time. #01:17:34#

CHANCELLOR BROWN: Yeah. I did get – 50 percent is not bad, I guess, on a case like that. I didn't know it was going to be this big of a thing when it started. And I guess I probably didn't realize it was this big of a thing until you got me into this, but...

MR. BAYLISS: Well, thank you very much for sharing your thoughts today.

#01:17:55#

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